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DE JURE BELLI AC PACIS LIBRI TRES

BY HUGO GROTIUS

VOL. I. A Photographic Reproduction of the Edition of 1646, with a Portrait of Grotius.

VOL. II. A Translation of the Text, by Francis W. Kelsey, with the collaboration of Arthur E. R. Boak, Henry A. Sanders, Jesse S. Reeves, and Herbert F. Wright, with an Introduction by James Brown Scott.

This volume with Volume I constitutes No. 3 of 'The Classics of International Law'. A list of the numbers already published is given at the end of this volume.

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HUGO GROTIUS

VOLUME TWO

THE TRANSLATION

BOOK I

By Francis W. Kelsey

WITH THE COLLABORATION OF

ARTHUR E. R. BOAK, HENRY A. SANDERS,
JESSE S. REEVES AND HERBERT F. WRIGHT

AND AN INTRODUCTION BY

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INTRODUCTION[1]

Huig de Groot, whom we know and venerate under the latinized name of Hugo Grotius, is not a man with one book to his credit ; but lawyers of all parts of the world are celebrating the three hundredth anniversary of one work of his, *De Jure Belli ac Pacis Libri Tres*.

It appeared, it would seem, some time in the month of March 1625.

For many years it was looked upon as a *tour de force*, as an extraordinary achievement for a politician in exile and a humanist to his finger-tips to have turned off within the space of a few months a treatise on a dry and admittedly technical subject, whose principles were ill-defined and, where known, were treated with scant respect.

His preparation for the work was not obvious. It is true that a pamphlet on the freedom of the seas had been published anonymously some sixteen years before, and it was known to those who took an interest in the matter that Grotius was its author ; the connexion, however, between the *Mare Liberum* of 1609 and the masterpiece of 1625 was not evident. It was a far cry from a pamphlet maintaining a special interest, to a general treatise setting forth the rights and duties of nations in war and in peace. The knowing ones would have us believe that he began the composition of the great work in 1623, upon a suggestion of the famous Frenchman, Nicholas Peiresc, ' the Maecenas of his Century and the Ornament of Provence ', and a letter from Grotius himself, dated January 11, 1624, is invoked in support of Peiresc's intervention. Writing to his patron from Paris, Grotius said :

> I am not idle, but am continuing the work on the Law of Nations (De Jure Gentium), and if it proves to be such as to deserve readers, posterity will have something which it will owe to you, who summoned me to this labour by your assistance and encouragement.

It may well be, indeed, that Grotius was moved to compose the law of nations because of the encouragement which he received from Peiresc, but he would have been unable to please his patron by the production of a manuscript within two years on such a subject without elaborate preparation extending through a long period of years. The suggestion that Grotius should write something for publication may have come from Peiresc, but that it should be a treatise on the law of nations doubtless came from Grotius.

So matters stood until 1868, when another and an earlier manu-

[1] Translated from ' La Genèse du Traité du Droit de la Guerre et de la Paix ' in *Revue de Droit international et de Législation comparée*, 1925, pp. 481–527.

script of Grotius was published at The Hague, not due this time to a literary patron, such as Peiresc, but to the Dutch East India Company, which had availed itself, it would appear, of Grotius's services as counsel in a case in which it was deeply interested. It was a moderate-sized octavo volume under the title of *De Jure Praedae Commentarius.* At once the relation between the booklet of 1609 and the book on the law of nations of 1625 became evident.

The tractate on the freedom of the seas was only the twelfth chapter of the manuscript *On the Law of Prize*, and the three books *On the Law of War and Peace* were the revision of the *Commentary on the Law of Prize* expanded by its author to apply to a world at war. We are no longer face to face with a professional brief in which law is pressed into the service of a client, but we are confronted with a treatise whose purpose was to bring the actions of this world at war into harmony with principles of justice and the practice of Christian peoples. The three books were the work of a lawyer, as was the *Commentarius* ; they were likewise the work of a humanist, or, better still, of a humanitarian in whom the head and the heart co-operated.

The first public intimation of the existence of the *Commentarius* was contained in a catalogue of manuscript books which were stated to have once belonged to Grotius, and which, in 1864, Mr. Martinus Nijhoff, a bookseller of The Hague, was about to dispose of at public sale.

Grotius himself seems never to have mentioned the manuscript in his other books or in many letters, according to Professor Hamaker's introduction prefixed to the text of the *Commentarius*, which he edited and Nijhoff published in 1868. The manuscript was purchased by the University of Leyden, in which seat of learning Grotius had been a student and of which he is certainly one of the most illustrious graduates. It was found to be, as claimed, in the handwriting of Grotius. The *Mare Liberum* was known to be his, and it was now found, barring slight modifications to fit it for independent publication, to have formed the twelfth chapter of the *Commentarius.*

We have Grotius's own account, in his *Annales et Historiae de Rebus Belgicis ab Obitu Philippi Regis usque ad Inducias Anni 1609*,[1] of the facts which led to the composition of the *Commentary* :

> The King of Jora also (this is a Kingdome in the region of Malacca), daring to rip up old injuries against the Portugueses, incited Jacob Hemskerck, then having with him two Holland Ships, to set upon a Carrack of an immense magnitude that lay in the Streights between Malacca, a Portugal colony, and Sumatra ; which he accordingly did, the said King being both the author and witness of the Victory. The Hollanders, con-

[1] This work was written by Grotius in 1612, but was published for the first time in 1657, some thirteen years after the death of the illustrious author. The above quotation is taken from the English translation published at London in 1665 under the title *De Rebus Belgicis : or, The Annals and History of the Low-Countrey-Warrs*, Book XI, pp. 731–2.

tented with the booty, which was very great, spared the lives of all the persons in it, (being near seven hundred of all sexes and ages), although there yet appeared many fresh examples of Portugal cruelty. . . . Thus wealth being gotten from the publick Enemy, and great damage done to the King and Portuguese, great advantage was gotten with honour by the Hollanders both in private and publick. Yet some were found in this industrious and gain-seeking Nation, who would refuse part thereof as not convenient or fitting, being by force of Warre taken from Merchants and, as it many times happens, such as least deserve it. . . .

And from this time, a new Warre as it were arising in the East, the Indian Company began to be esteemed a great part of the Commonwealth, for that not onely a part of all booty came to the publick Treasury, but also the common Enemy was exhausted at the charge of private citizens, that daily made spoil of him, and made him be at infinite expences in his defence.[1]

According to this passage, it is evident that there is question: (1) of a capture made by Dutch vessels against the Portuguese; (2) of a prize case; and (3) of the scruples of certain Dutchmen to take a share of the booty coming to them under the law of prize.

The year in which the capture took place was 1602, and many competent persons believe that Grotius was retained by the Dutch East India Company to justify the capture of the Portuguese galleon.

The reasons which induced Grotius to write his *Commentary* are disclosed in a *Defense of the Freedom of the Sea against Welwod.*

It was not published during his life, but the manuscript was found together with the *Commentary on the Law of Prize*, to which the *Defense* is related. And it is Grotius himself who explains to us, what he withheld from his contemporaries, the circumstances surrounding the composition of the *Commentary*.

Some years ago when I saw that the commerce with India which is called East was of great importance for the security of the Fatherland, and it was apparent that this commerce could not be sufficiently maintained without arms, in view of the Portuguese obstructing it through violence and trickery, I gave my attention to arousing the spirit of our countrymen to safeguarding bravely what had been so felicitously begun, since there had been put before my eyes the justice and equity of the case itself, the source from which in my opinion originated the confidence in law which has been handed down to us by the ancients. Therefore all of the rights of war and prize and the history of those deeds of savagery and cruelty which the Portuguese had perpetrated against our countrymen and many other things relevant thereto, I had detailed in a sufficiently complete *Commentary* which up to the present I have refrained from publishing.[2]

It is to be supposed that Grotius prepared the *Commentary* either in his own professional interest in the case before the Prize Commission, or in order to satisfy the curiosity of the Dutch and foreigners interested in this *cause célèbre*, or even at the request of the East India Company, which was largely interested in the affair in a financial way. The *Commentary* appears to have been written in the winter of

[1] *Ibid.*, p. 734.

[2] Translated from the original as quoted in Professor Hamaker's preface to *Hugonis Grotii de Jure Praedae Commentarius* (1868), pp. ix–x.

1604–5, and Grotius himself stated, according to Professor Hamaker, that he ' neither changed nor added anything in the text after November 1608, at which time he ordered Chapter XII to be published separately '.[1]

In any case, it is this Company, to which Grotius had rendered professional services, which is responsible for the publication in 1609 of that chapter of the *Commentary* dealing with the *Freedom of the Seas*.

This is the reason according to the *Defense against Welwod* :

> But when, a short time thereafter,[2] some hope was extended by the Spaniards for peace or truce with our country, but any unjust condition was demanded by them, namely, that we refrain from commerce with the Indies, a part of that *Commentary*, in which it was shown that this demand rested neither upon law nor upon any probable colour of law, I determined to publish separately under the title of *Mare Liberum*, with the intention and hope that I might add courage to our countrymen not to withdraw a tittle from their manifest right and might find out whether it were possible to induce the Spaniards to treat the case a little more leniently after it had been deprived not only of its strongest arguments but of the authority of their people, both of which considerations were not without success.[3]

We do not know why Grotius refrained from publishing the complete text of the *Commentary*. ' It is probable ', according to Rolin-Jaequemyns, ' that the stringent scruples of some members of the Company disappeared of themselves in less time than was needed for the author to get out his learned argument.'

We do know, however, both the circumstances surrounding the composition of the *De Jure Belli ac Pacis* and the motive which determined Grotius to make it public in 1625. He takes us into his confidence in the twenty-eighth section of the Prolegomena or introduction which he prefixed to the treatise, saying :

> Fully convinced, . . . that there is a common law among nations, which is valid alike for war and in war, I have had many and weighty reasons for undertaking to write upon this subject.

And he continues with a passage hardly less applicable to-day than it was in the stirring times during which he spent his exile in Paris.

> Throughout the Christian world I observed a lack of restraint in relation to war, such as even barbarous races should be ashamed of ; I observed that men rush to arms for slight causes, or no cause at all, and that when arms have once been taken up there is

[1] The opinion of Fruin and Hamaker is not shared, it seems, by Kosters, himself a Dutch savant, who finds it hard to believe that there could be already found in the *Commentary* of Grotius, written in 1604 and revised for the last time in 1608, ' the same distinction between the two kinds of Law of Nations that seven years later was to be revealed at Coimbra by the venerable Spanish Jesuit, Suarez, *Tractatus de legibus ac Deo legislatore*, and to become a decisive element in the development of the Law of Nations '. See *Les Fondements du Droit des Gens*, a masterly contribution to the general theory of the Law of Nations, by J. Kosters, Judge of the Supreme Court of the Netherlands, former Professor of the Law Faculty of Groningen, in *Bibliotheca Visseriana*, vol. iv (Leyden, 1925), p. 41.

[2] The composition of the *Commentary* (1604–5) referred to by Grotius in the passage cited above.

[3] Translated from the original as quoted in Professor Hamaker's preface to *Hugonis Grotii de Jure Praedae Commentarius* (1868), pp. ix–x.

no longer any respect for law, divine or human ; it is as if, in accordance with a general decree, frenzy had openly been let loose for the committing of all crimes.

In the thirtieth section Grotius takes his readers still further into his confidence. ‘ At the same time,’ he said, ‘ through devotion to study in private life I have wished—as the only course now open to me, undeservedly forced out from my native land, which had been graced by so many of my labours—to contribute somewhat to the philosophy of the law, which previously, in public service, I practised with the utmost degree of probity of which I was capable.’ This is the reason which he gave to show his preparation for the work in question. It is followed by another, not untinged with ambition. ‘ Many heretofore have proposed to give to this subject a well-ordered presentation ’, a statement followed with the laconic observation that ‘ no one has succeeded ’.

The impelling purpose was to show that there was a law in time of war and, by so doing, to contribute not only to its observance, but also to the philosophy of law. Lawyer by profession and having practised his profession, as he himself informs us, ‘ with the utmost degree of probity ’, he was intellectually qualified for the task. In the *Commentary on the Law of Prize* he had at hand the materials for his undertaking. But the *Commentary* was only the skeleton ; it was the privilege and the immense service of Grotius, still in his early manhood, to make of it a thing of flesh and blood.

Rolin-Jaequemyns [1] thus compares the *De Jure Praedae* of 1604–5 with the *De Jure Belli ac Pacis* of 1625 :

The first work has all the qualities and all the defects of youth except ignorance. We know how precocious Grotius was. The *De Jure Praedae* teems with erudition, classical, theological, philosophical, and juristic. This erudition, however, does not prevent a warm and brilliant style, rapidity of thought, nor even a certain striving for striking expressions. The defect is that throughout the work Grotius is an ardent advocate rather than an impartial judge. He has not reached that sublime severity which experience later gave him. He loves positive and paradoxical assertions (the very title, *De Jure Praedae*, has an air of defiance), and he has no idea of those famous *temperamenta*, which, in his great treatise, were to represent the progressive and humanitarian element of law. . . .

That is to say, the work of his youth has not the full ripeness nor masterly character of the author's masterpiece. None the less it is a remarkable work which alone would have sufficed to place Grotius beside Victoria, Ayala and Gentili.[2]

It is to be noted that M. Rolin-Jaequemyns mentions in this passage the great predecessors of Grotius whose works had been

[1] In a review of Hamaker's edition of Grotius's *De Jure Praedae* in *Revue de Droit international et de Législation comparée*, vol. vii (1875), p. 696.

[2] *Ibid.*, p. 695. We know that Grotius, like Victoria, although a layman, was a theologian to his finger-tips ; that he was interested in war and its conduct, though not an officer in the army as was Ayala ; if not a professor, as was Gentilis, he was even more learned, and as an advocate he was accustomed to regard even theoretical questions from the practical point of view.

published before the composition of the *Commentary*. If we add the *Tractatus de Legibus ac Deo Legislatore* of Suarez which appeared in 1612, we have four of the names honoured by posterity as the founders of international law. By adding that of Grotius, who terminated the first period and is the point of departure for the next, we have five, of whom two, Gentilis and Grotius, were Protestants.

There are some who are prone to forget that there were great men before these two masters. Enough time has passed, it would seem, since the Reformation to be just to their predecessors, and especially should we be mindful of this in this tercentenary of the publication of the treatise of Grotius, who himself did not forget it.

International law existed before the publication of the first systematic treatise which Grotius has had the great honour of transmitting to posterity. Thomas Aquinas specialized in natural law. Victoria the Spaniard distinguished *jus naturale* and *jus inter gentes*, which Suarez had treated in a masterly passage and with final authority. Ayala, to whom Grotius referred in the Prolegomena, is also a Spaniard, and we may say that the work of this great Spanish trinity, not to mention many other Spanish notables of that epoch, would perhaps have enabled another than Grotius to combine their work systematically and to make of it the basis of his treatise.

The primary foundation of the system of the law of nations is the Roman law, the universal law, upon which was based the canon law, as universal as the Church from which it emanates.

The theologians and philosophers of the Middle Ages fused together these two systems of law, and it is quite natural that the faithful of the Church universal laid down the foundations of that universal law which is the law of nations. If we recall that Gentilis was Italian, we may say that international law is of Latin origin, as well as of Catholic origin.

In any case, as we are told very plainly by a compatriot of Grotius, Dr. Kosters, in his admirable *Fondements du Droit des Gens*,[1] who prefers the tree of science to inanimate foundations, 'we have come to the fullness of time; a hand is stretched to gather the ripened fruit'.

It was the hand of a Hollander.

*
* *

In 1604 a case was tried at Amsterdam which for many reasons remains a *cause célèbre*. It appealed to the imagination of Europe, and it seemed to furnish indirectly the opportunity for composing the first systematic treatise on the law of nations.

It is thought that Hugo Grotius represented the Great United Company of the East Indies in the proceedings before the Prize Court.

[1] In *Bibliotheca Visseriana*, vol. iv (Leyden, 1925), p. 32.

The documents which could establish the fact no longer exist, having been destroyed in the last century by a fire which burnt the buildings of the Ministry of the Navy where they were preserved. We do know, however, that he had very close relations with the Company and that he represented it before the States General in 1606.

In the interval he composed the *De Jure Praedae Commentarius*, which was based on official documents and was a written brief or argument on behalf of the Company in its capture of the Portuguese galleon in the waters of the East Indies, from which the Portuguese sought to exclude the Dutch.

We also know that upon the request of the Company he detached the twelfth chapter of the *Commentary* to publish it separately in 1609 under the title of *Mare Liberum*, in order to defend the interests of the Company and to influence favourably the negotiations then in progress between Spain and Holland for peace on reciprocally acceptable bases.

The opinion of the Dutch savant, M. Robert Fruin, formerly Professor of Dutch History at the University of Leyden,[1] who has examined all the existing documents relating to the capture of the Portuguese vessel, the prize procedure before the Dutch Admiralty in 1604, and the relations of Grotius with the Company, is that it was indeed he who represented the Company before the Prize Commission and defended its interests to the world at large. Professor Fruin is firmly convinced that the *Commentary* is only a development of the professional arguments which Grotius found effective before the Prize Court. Hence it follows that the great treatise *On the Law of War and Peace*, justly considered as the first systematic treatise on international law, is the result of the professional labours of a Dutch advocate versed in international law and away from his practice : one who, as we now know, kept his *Commentary* with him and enlarged it by adding the parts concerning peace, in order to treat of war and peace for the first time in a systematic form acceptable to the nations.

Thus it is that the arguments of Grotius have made their way from the Prize Commission throughout the world, and that even in

[1] *Een Onuitgegeven Werk van Hugo de Groot*, in his *Verspreide Geschriften*, vol. iii, pp. 367–445. The text of this remarkable work appeared for the first time in 1868 ; an appendix was added in 1874.

An English translation entitled *An Unpublished Work of Hugo Grotius's* appears in *Bibliotheca Visseriana*, vol. v (Leyden, 1925), pp. 1–100.

Professor Hamaker, in the Preface to his edition of the *De Jure Praedae*, is in agreement with Professor Fruin. Likewise the study of Professor Fruin forms the basis of the present article, the text of which may be considered in large part a résumé of that excellent monograph.

The writer of the present article, nevertheless, asked two Ministers of Foreign Affairs of the Netherlands to have the archives of their country examined in a last effort to find, if that were still possible, official documents concerning the prize case. They stated that there was nothing more to be had. In the absence of original documents, Dr. Fruin's essay therefore has unusual value. It is almost our only source, and the one which is destined to become a classic, concerning that episode in the life of Grotius.

our own days they influence foreign offices as they formerly convinced the Dutch magistrates.

Without the fire which destroyed the arsenal and with it the original documents, it would not be necessary to cite secondary proofs ; but we cannot be content with a simple statement when the practical origin of the first treatise on international law is in question.

The victorious Heemskerck arrived with his prize at Amsterdam in the summer of 1604. The cargo of the captured vessel was of a kind and value to appeal not only to the Dutch but to foreigners. The articles were of two kinds, one of them perishable. For this reason it was impossible to await the end of the case before offering them for sale. The Dutch are above all reasonable people, and are reputed to possess commercial traits which are lacking in others. Professor Fruin tells us that it was desired to take advantage of the approaching fair at Frankfort to sell the perishable goods, and we may also recall that Grotius himself later worked in haste in order to get the first copies of his treatise on sale at the Frankfort Fair.

The States-General of Holland, by a resolution of July 29, 1604, authorized the public sale, ' notwithstanding that no judgment has declared the property good prize,' and this sale was fixed for August 15 and the days following.

As Fruin has it, relying on the declarations of Grotius himself, ' an incredible multitude had come from all the countries of Europe, especially from the Hanseatic towns and the imperial cities of Swabia.' Thanks to this commercial instinct which characterized the Dutch of that time, the prospective purchasers were divided into two classes : those from Amsterdam who were given six months' credit, and foreigners who paid cash.

The hearing continued during the sale, and on September 9, 1604, the carak with its entire cargo was declared good prize. After the judgement another sale took place, on September 21, and this second sale was more widely advertized abroad than the first. Only merchants took the perishable goods ; but the great of this world took an interest in the distribution of the durable property. Henry IV, through the agency of his ambassador, took some. On October 4, 1604, the French Ambassador, M. de Buzenval, wrote to M. Villeroy, the King's Minister, who was not above accepting some of the produce : ' I caused our case to be put as honourably as I could, in keeping with the dignity of Their Majesties, in behalf of that which was found therein to be the most worth while,' and with reason, for had not the great Henry called the little Grotius ' the miracle of Holland ', and is it not customary to pay compliments.

Nor were the Ambassador and M. Villeroy the only signatories to accept the merchandise ; the colleagues of the Minister Villeroy,

the Sieurs Sillery and Rosny, better known as the Duc de Sully, appropriated their part of the prize.

It seems that France was the first to present itself, but that other nations also came forward. For example, the King of England and Scotland, the famous James Stuart, accepted a portion, although he was at that very time in the midst of negotiations for a treaty of peace with Spain, which was at war with Holland. Nor is the Margrave of Anspach to be forgotten who, by a happy chance, found himself in Holland. But the Dutchman knew his business. The beneficiaries of the prize affixed their seals to the Admiralty award, which was, on their part, a recognition both of the justice of the award and of the right of Holland to make war on independent nations and to capture their vessels.

This case appealed not only to the imagination of the great. There was at The Hague, according to Professor Fruin, a young advocate who sought glory as the lords sought profit. It was Grotius, who at that time was only twenty-one years old, but had for four years practised the profession of law and had already attracted attention at the bar. Nevertheless he was not satisfied. He envied the lot of his friend Heinsius, Professor at the University of Leyden, although he was but three years older than the young Grotius who found himself condemned to waste his time with the trials of others.

In a letter of June 21, 1603, exactly a year before the arrival of the prize and the case it occasioned, the young advocate wrote harshly of his profession. Cases, he said, required a great deal of time and trouble ; they inconvenienced those who loved to study, like these two serious young men, and besides, they brought neither gratitude nor glory. Grotius was sure that the labours of an advocate were not worth the candle.

He admitted that he had made progress at the bar, thanks to several cases which turned out well, and the poor young man was worrying because each day he had less and less time. That is to say, he was making such progress at the bar that he did not have enough time at his disposal to devote to classical studies. As very often happens, he succeeded despite his regrets.[1]

Exactly four years from the date of this doleful letter, Grotius was appointed Fiscal Advocate, that is to say, Attorney-General, of

[1] Regarding the value of the experience which Grotius had had at the bar, Professor Fruin '. . . His activity as advocate was not lost to jurisprudence. A man like de Groot could not occupy himself with any branch of knowledge without shedding light on it. . . . Trained in the school of antiquity, used to logical method, and himself of an excellently systematic turn, he already mentally classified the subject-matter which in the dungeon of Loevestein he was to expose in such a masterly manner in his *Introduction to Dutch Jurisprudence*. In later years he prided himself on having been the first to make known to the Dutch bar that jurisprudence, "that knowledge of things divine and human, that art of the equitable and the good, whose leaders are reason and the revelation of God, whose companions are all the sciences", in all its extent and its excellence' (*op. cit.*, pp. 38–9).

Holland, and by his *Introduction to Dutch Jurisprudence*, written later, in prison, when he had but few books at his disposal, he so clearly demonstrated his mastery of the knowledge of the law of his country, that this book, still justly celebrated in Holland, is even now the basis of jurisprudence in South Africa, colonized, as we know, by his compatriots. After prolonged research and a profound analysis of the cases and the labours of Grotius in connexion with them, Professor Fruin is of the opinion that he was certainly the advocate of the victorious claimant in the prize case of 1604. There is a most interesting passage in his masterly essay [1] on the unpublished work of Grotius called the *Commentary*, in which Fruin says :

> We may imagine how happy a man like him must have felt as often as a case cropped up in his practice that could not be decided according to the common routine, but had to be settled in conformity with the higher principles of law. With joy he then consulted his favourite authors, the Roman lawyers and their worthy rivals of later times, the philosophers and even the theologians, and he meditated on what he had read and used it, but as the material which only in his hands became fit for the purpose proposed. Such a question of law now presented itself when the admiral of the East India Company captured the Portuguese ship. An ordinary practising lawyer was not able to answer it fundamentally fully. The laws of war and the law of nations had to be applied, and what barrister had ever heard of those laws ? Most of them did not even know from what sources they sprang. De Groot, who was not twenty-one years old, was among all his colleagues probably the only one who knew how to tackle such a case, whence he had to borrow the principles of law which must guide him in deciding. If my conjecture is correct, and the Company entrusted the conduct of the lawsuit to him, they could not have been more fortunate in their choice.

The learned professor thinks that it would not have been necessary to prove Grotius's connexion with the case by indirect means, if the documents concerning it had not been burned in a fire. Not only were the files of the advocates who pleaded the case destroyed, but the award itself did not survive the disaster. Nevertheless the case was so celebrated that the Germans, who have a keen eye for international affairs, were interested in it to such an extent that they procured the documents, including the award. From this award, preserved by their care, the contentions of the victors are known to us and they are the same as those discussed by Grotius in his *Commentary*. It may be, as Professor Fruin says, that their similarity can be explained by the simple fact that Grotius knew the award, but he adds [2] that Grotius

> was not the man to merely repeat what others had demonstrated before him. I am more inclined to surmise that he served the company in its lawsuit as a barrister, and that he himself was the drafter or one of the drafters of the written demands about which the sentence was pronounced.

If the great Dutch historian is right, the ambition of Grotius was

[1] *Op. cit.*, p. 39. [2] *Op. cit.*, p. 25.

satisfied. He had already found in this celebrated case the glory which more modest clients failed to bring. Grotius was, however, very difficult to satisfy. He had insatiable ambition ; he wished to achieve distinction as a statesman, and he tried to rival the great ministers of his time. He composed verses, especially in Latin, as was then the mode. He was a theologian, and was so eager to unite the sects to the Church universal that even in our day it is disputed whether he was Protestant or Catholic at heart. We may be sure that he made use of the celebrated case from a literary point of view, just as he put to profit his literary taste and even his religious sentiments. The interests of the Company were in accord with the ambitions of the advocate to connect his name for ever with an international incident. The Dutch merchants had decided to send their vessels to the East Indies. The first vessel to journey to the promised land returned with more experience than profit, but it brought the welcome news of the feebleness of the Portuguese. Therefore the merchants of Holland zealously organized the Companies for the great adventure. As competition would injure them, they were combined into one great East India Company. To make money was agreeable enough, but to make war was a very different matter ; it was over costly. They were obliged to be armed to defend themselves against the Portuguese ; they were obliged to be armed still more in order to capture them. And it was exactly at this point, as often happens elsewhere, that moral scruples cropped up.

Among the Protestants composing the great Company, there were some Mennonites and members of other peace-loving bodies whom it is customary to style Anabaptists. It cannot be doubted that their members were sincere in their opposition to war, but it seems to be human nature to protest more strongly when the pocket-book is affected. The expenses necessary to arm ships diminished by just so much the profits of trade, which requires an atmosphere of peace in order to bear fruit.

At the outset merchant vessels were authorized to defend themselves against attack. Later the States-General authorized the Company to make captures. This was privateering. Now the capture which gave rise to the case which has been described was made before the authorization given by the States-General to engage in hostilities. The judgement of the Prize Commission in favour of the Company justified the capture of the ship. The Anabaptists were shocked, as they were opposed to the use of force, and the authorization given by the States-General determined them to withdraw from a Company which evidently would not hesitate, either in its own interest or in that of the State, to wage war against the Portuguese in the East Indies. This could not be helped. If it was desired that the trade

be continued, what was to be done? The chief among the Anabaptists set the example. He sold his stock, withdrew from the Company, of which he was a director, and attempted to gain profit from a peaceable trade in the same countries.

As there had been some thought of organizing an East India Company in France under the patronage of the same Henry IV, who, as we already have seen, had a liking for oriental gifts, one Peter Lijntgens, the director in question, saw in this a double protection: the Dutch Company would have the better of the Portuguese, if they had any idea of attacking the Dutch enterprise; and his Company, being organized in France, would be able, so he hoped, to trade peacably in oriental waters, since France was at peace with Portugal and its suzerain Spain.

But the Dutch were prudent. Oldenbarneveldt, at that time Grand Pensionary of the Netherlands, intervened, it seems, in an underhand way, and Henry IV died in 1610 without the Company being organized. Thereafter there was no reason for establishing the French Company, for on April the 9th of the preceding year, through the good offices of France, a truce of twelve years had been signed between the Netherlands and Spain, and of course Portugal, recognizing the right of the Dutch in the coveted waters, a truce which was transformed at length into formal peace. But at the time of the judgement the future could not be foreseen, and the United Company of Holland wished to be protected in every way against the unknown.

Here again we find Grotius.

Engaged in the prize case, he set himself immediately after the judgement to write a defence of the Company, which he finished in the spring of 1605. This is the *Commentary on the Law of Prize*, written in the interest if not at the direct suggestion of the Company. He wrote it rapidly, for two years had not elapsed between the arrival of the prize in the Dutch roadstead and the termination of the *Commentary*. There was exactly the same period of time between the beginning and the finishing of the *Law of War and of Peace*, and for the same reason. For the preparation of the *Commentary*, it seems that he had his memoranda made as advocate, the judgement rendered by the Prize Commission, and the documents of the Company. For the composition of his masterpiece a score of years later, he had at his disposal the *Commentary*, and, as Professor Fruin points out, the argumentative part alone of the *Commentary* furnished him half of the famous treatise. To justify the Company and pacify the Anabaptists it was necessary to prove that war was not opposed to the Christian religion, and that it was permitted to Christians to make what was called a 'just war'. Besides it was necessary to prove that

a private company could make private war in its own defence before it had been converted into a public war. This was the double task of Grotius ; he succeeded so well and to his own satisfaction that he has likewise justified private war as well as public war in his great treatise. We are permitted to think, therefore, that the advocate of 1604 was practising his profession when he addressed himself some eighteen years afterwards to the composition of the elaborate treatise.

We are obliged to conjecture why Grotius did not publish the *Commentary*, as he himself gives no reason. There may have been several reasons. One might be that after all, since the Anabaptists had been unable to create a great French Company owing to the intervention of the Dutch authorities, it was not necessary to 'convince' them, for they had not succeeded in creating competition. Another reason might be that the business of the Company was prospering and that the losses did not materialize which had been anticipated. Business and profits continued. The capture of the Portuguese ships was a patriotic work and public opinion approved it.

Professor Fruin thinks that there was something in the character of the Dutch impelling them to attend to their business and to keep silence. He points out a passage of a letter from Grotius to his brother, written later : 'I am curious to know whether the Dutch will defend themselves in silence while keeping what they have acquired, or whether they will try to justify themselves.' This passage is laconically commented upon by his fellow-countryman Fruin. It was more simple to do what was possible than to prove what was permissible. To use the diplomatic phrase, 'we bow before the accomplished fact.'

But the Company had not finished with Grotius, although it was decided not to publish his *Commentary*. The Anabaptists were silent, but they still had influence. There was under negotiation a treaty of peace with the enemy, and Spain did not wish to recognize in the Dutch the right of navigation and commerce in the oriental waters. The Company feared that public opinion would prefer to sacrifice the individual interest of the Company rather than give up peace.

Their rights were defended in published pamphlets, and again recourse was had to Grotius. The Company asked him in a letter of November 4, 1608, to detach Chapter XII of his *Commentary*, and, after making the changes necessary for its separate publication, to give it to the public. The young advocate, who had then retired from the bar and was Attorney-General of Holland, was persuaded to do so. He worked rapidly in order that the chapter, now christened *Mare Liberum*, might make its appearance in time. It seems probable that it was published in the month of March 1609. His great treatise made

its first appearance likewise in the month of March, sixteen years later. Grotius asserts that this little work, which did not bear his name on its first appearance, confirmed public opinion and influenced the Spaniards to renounce their illegal claims. And perhaps Grotius knew better than his critics, who are of the contrary opinion. In any event, a part of the *Commentary* was published. Grotius knew very well, although the world at large did not suspect until the publication of the *Commentary on the Law of Prize* in 1868, the connexion between the *Mare Liberum* and the *Commentary*, and that between the *Commentary* and its amplification which is called the *Law of War and Peace* of 1625. It may well be that the publication of a fragment of the *Commentary* created in Grotius a desire to publish it in its entirety. But in its existing state that was impossible. The war with Spain had terminated, and the denunciation of the Portuguese was better suited to a pleading than to a scientific work. The first, or theoretical part, of the *Commentary* remained intact. The third part concerning the liberty of commerce on the high seas had been published, and the second or historical part could not be made use of as it was. The anonymous author therefore waited for a more propitious moment, although the Company on September 16, 1612, had under consideration : ' whether it would not be well to have revised, for the honour and glory of the Company and of the country, the history of the trade with the East Indies by the Fiscal Advocate Grotius or some other expert ; and have this history printed at an opportune time.'

Professor Fruin thinks that Grotius was behind this resolution, and indeed that it was he who had suggested it. The Company postponed its decision because of the need of more information concerning the East Indies. Grotius was, it would seem, too much occupied with public duties to undertake this work. He had become the associate of the Grand Pensionary Oldenbarneveldt. Three years after the proposed history, he himself became the first magistrate of Rotterdam, and the necessary time was wanting. Moreover, even if his professional occupations had left him time to do so, he no longer had the inclination. The great quarrel between the Arminianists, as the liberal Calvinists were called after the name of their chief, and the Gomarists, or uncompromising Calvinists, had broken out.

Oldenbarneveldt and Grotius belonged to the moderate party. The public took the side of the conservatives, accepting unreservedly the doctrine of predestination, and Prince Maurice the Stadtholder attached himself to the popular party, finding there a good pretext for getting control of the Government and getting rid of Oldenbarneveldt and his followers, the Barneveldt who had aided his father William, Prince of Orange, and who had completed the work of the great silent statesman by securing the recognition of the independence

of his country. Oldenbarneveldt was brought before a picked commission, condemned to death, and executed on May 13, 1619. Grotius, then the understudy of the great statesman, was likewise brought before this illegal commission and sentenced to what they were pleased to consider a living death: perpetual detention in the fortress of Loevestein. This took place on May the 18th. Through the intelligence and heroism of his wife, Grotius escaped on March 22, 1621, reached France, and there began and finished the composition of the three books *On the Law of War and Peace.*

In the month of November 1622 he was beginning to gather some books '*ad aliquid de jure commentandum*', and as Professor Fruin aptly says, this *aliquid* was nothing else than the plan of his masterpiece. He set himself seriously to work in April of the following year, and two years later the first systematic treatise on the law of nations was finished. Up to the publication of the *Commentary* in 1868 it could not be satisfactorily explained how Grotius had been able to write within a couple of years a systematic treatise *On the Law of War and Peace.* As a very young man he was considered a prodigy; but he would have better deserved that reputation if he had been able to begin and complete this great volume, while in exile far from his books, in the space of two years. The discovery of the manuscript of the *Commentary* and its publication in 1868 explain the miracle. We now know that Grotius devoted himself professionally in a great degree to international law during a certain number of years. His correspondence shows that, even after he withdrew from the bar and had given up the practice of his profession, he meditated upon the subject-matter of the *Commentary*, and if Professor Fruin is right, Grotius always had in mind the revision of the theoretical part of the *Commentary* and of publishing it separately, as in the case of Chapter XII, under the title of *Mare Liberum*, although the original would need to be modified and greatly enlarged.

In support of this opinion, Professor Fruin states that Grotius dealt in the same way with a book of his youth which he did not wish to publish as it stood, and which, by reason of the necessities of his profession, he had not had time to put into a more suitable shape.[1]

There is not lacking evidence that Grotius always had in mind *aliquid* concerning the law of nature and of nations, and perhaps concerning international law. In this connexion Professor C. van Vollenhoven takes the place of guide, instead of Professor Fruin, in the admirable series of observations which he made in 1924 *On the*

[1] 'About the same time, it seems, he acted likewise in connection with another product of his youth, which he had kept in his desk for years and probably had not even finished, the often quoted comparison of commonwealths: *Parallelon Rerum Publicarum libri tres.* . . . The famous *Antiquitas Reipublicae Batavae*, which saw the light in 1610, is nothing but a separate and possibly a somewhat altered edition of the second book of these Parallela' (Fruin, *op. cit.*, p. 46).

Genesis of De Jure Belli ac Pacis in a communication to the Royal Academy of Sciences of the Netherlands, and which he had the happy idea of publishing in a separate reprint.[1]

In a letter of 1614 to his younger brother William, who was taking up the study of law, written from Rotterdam where Grotius was himself Pensionary, the elder begged the younger to read carefully and to note in the margin passages concerning the natural law and the law of nations.

The following year Grotius wrote, still from Rotterdam, to his great friend du Maurier, then Ambassador of France to the Netherlands, a letter giving advice as to studies in law and especially the law of nations.

At the same time he wrote again to his brother giving him certain outlines on the subject of natural law and the law of nations, and in the autumn of the same year he wrote him still again on the same subject. The following year, that is in 1616, the last year of his brother's course as a student at the University of Leyden, he wrote again and mentioned anew, among other subjects, civil law and the law of nations. The Loevestein incident took place in 1619, and it would have put an end to such considerations had Grotius been an ordinary man. Happily for the world, he was not an ordinary man. We know from a letter written from Paris in 1623, still to his brother William, that he managed to procure in prison and to read the *De Jure Belli* and the *Advocatio Hispanica* of Gentilis.

Even before undertaking the composition of the great book he occupied himself with public law, as we gather from a letter to the brother of that noble woman who preserved him for us and for international law.

It has already been remarked that Grotius wrote in prison the *Introduction to Dutch Jurisprudence.* He was thus obliged again to consider natural law in its relation to the civil law of a country, his own.[2] As has already been suggested, it was appropriate that he should complete his studies in law by the application of natural law to nations, especially if we think of the *Commentary*, the first part of which treats precisely of this law. In doing this he gave to the world a treatise of the law of nations, which Professor Fruin assures us had always been his intention.

We should nevertheless consider the foundation of the opinion current before the publication of the *Commentary*, that it was Peiresc

[1] Amsterdam, 1924. See pp. 1–5 for the views of van Vollenhoven, and pp. 15–19 for the correspondence of Grotius; pp. 19–20 for two letters of Grotius to Peiresc and the letter of Peiresc himself regarding the *De Jure Belli* and the *De Jure Gentium.*

[2] See *The Introduction to Dutch Jurisprudence of Hugo Grotius*, now first rendered into English by Charles Herbert (London, 1845), Book I, chap. i, sect. v, vi, vii, x; chap. ii, sect. i, iv, v vi viii ix, x, xi, xii, xiii, xiv.

who suggested to Grotius the composition of the famous treatise *On the Law of War and Peace*, the French Maecenas of his time, ' one of the glories of Aix-en-Provence ' called by Bayle ' procurator of the Republic of Letters ', the friend of Malherbe, of Rubens, of Saumaise, of Galileo, of Gassendi . . . between the times when he collected medals, pictures, antique statues, gathered together one of the finest libraries of books and manuscripts, and corresponded with every one then considered by the world to be savants and men of letters.[1] Two letters of Grotius are brought to the support of this opinion, but they are not of great value when considered in connexion with the *Commentary*, whose existence was not suspected for two and a half centuries, and placed against the letters which preceded them.

The first of these letters is dated January 11, 1624 : ' I am continuing the work on the law of nations ; and if it proves to be such as to deserve readers, posterity will have something which it will owe to you, who summoned me to this labour by your assistance and encouragement.'

It may be remarked that Grotius had not finished his treatise at this date. When he had ended it, he sent to the noble gentleman a copy of the book on war and peace, excusing himself for not sending him ' Carmina ' as the poet would say, and availing himself of the occasion to say that it was thanks to Peiresc that he had written the book. Compliments were the order of the day in the seventeenth century.

In the absence of the correspondence, still unpublished, between the Maecenas and his ' poet ' from the years 1621 to 1625, it is the part of prudence not to express any opinion on its contents.

In the meantime there is a letter from Peiresc, dated July 16, 1624, and addressed to another friend of Grotius, which explains the relations between them :

> I am greatly rejoiced to learn that Grotius has finished his treatise *De Jure Belli*. This will be a great step toward the greater work *De Jure Gentium* which he promised, and which consists more in that than in anything else. I beg you to remember me to him and have him make clear that point, namely whether it is included therein, or whether he will undertake the rest.

Several observations of a technical nature are necessary in order properly to understand the import of this letter. In November 1622 Grotius commenced to procure books for his great undertaking, but it was not until April of the following year that he got to work, apparently after having obtained elsewhere the books of Ayala and Gentilis he had requested of his brother. According to what he himself told Peiresc, he worked slowly at first. But in the month

[1] Emile Henriot, in *Le Temps*, September 1, 1925.

of June 1624 he had made so much progress that his nephew, who lived with him, was already helping him with the copying. The task was almost finished. Peiresc said that Grotius had finished his treatise *De Jure Belli* in the month of July. Grotius had written to his father, on March 31, 1623, when he was revising his notes, that he intended to give his attention *ad juris opus aliquod*, and he thought first of *De Jure Belli.* It is quite possible that Peiresc knew better than the critics the nature of the work.

In any event he evidently considered as we do that war formed the nucleus of such a work, and that Grotius intended to make of it a treatise on the law of nations, adding what was necessary to the part concerning the law of war.

It may be admitted that the part concerning peace is, so to speak, interpolated in the text, and that it has more the air of an intruder than of an integral part of a project completely conceived in advance. It appears reasonable to believe that Grotius perfected the part which concerns war, which was before his eyes, and which was, according to him, the *raison d'être* of the treatise.

Peiresc could easily have encouraged Grotius without having suggested the subject to him, and indeed without even knowing just how much progress he had made at a given time.[1]

A savant like Professor Fruin insists upon the resemblance, with regard to subject-matter, between the part devoted to war, the most important of the treatise, and the first part of the *Commentary.* As Grotius had the text of the *Commentary* before his eyes, it is natural that he should enlarge it for inclusion in the new project. It remained for him only to add the sections lacking in the *Commentary*, forming almost all the second book of the treatise.

If Grotius had the manuscript of the *Commentary* before him when he commenced the revision of what was to become an independent work, it is evident that he worked rapidly after going over the *Commentary* to enlarge and add to it, in order to make of it a fairly complete treatise on the law of nations in a period of two years.

To be convinced of the use Grotius made of the work of his youth, it is only necessary to compare the *Commentary on the Law of Prize* with the treatise on international law. Professor Fruin himself made this comparison in such a way that he may be imitated but never

[1] This is the opinion which Professor van Vollenhoven develops in his pamphlet *On the Genesis of De Jure Belli ac Pacis* (*Grotius, 1625*) (Amsterdam, 1924), pp. 4–5: 'The true appreciation of Peiresc's share seems to be given in 1806 by Luden, Grotius's German biographer (*Hugo Grotius nach seinen Schicksalen und Schriften dargestellt*, 1806, p. 190): "and the encouragement of the celebrated Peiresc only advanced his decision to submit to the world the result of his researches." Hély, in 1875, also assigns to Peiresc the role of a supporter and promoter only of what sprang from Grotius's own ideas and impressions (*Étude sur le droit de la guerre de Grotius*, 1875, p. 19): "The intervention of the Councillor of Aix was not wanted at all. The fruit would have ripened without any fostering by other people (sans culture étrangère)."'

surpassed. It would be better to cite him and to give a résumé of the analysis which he has made of the relationship of these two books to each other, an analysis which has become an authority and which will, no doubt, remain a classic.

Professor Fruin states that Grotius 'found nothing essential' to modify in his *Commentary* when, after a lapse of twenty years, 'he undertook to transform his legal arguments into a manual on international law'. And the professor adds that Grotius could utilize in the treatise everything found in the *Commentary*. He seems perfectly convinced of this, and in support of his statement, 'I have compared the two carefully', he says,[1] 'and noted the corresponding passages in the margin of my copy.' It is to be regretted that we cannot have this precious copy before our eyes. Unhappily we have not, and in any event we do not share his opinion when he says that 'it would be too tedious and take too long to enumerate them all'.

But we have the summary of his conclusions: 'It may suffice to assure the reader that nearly all that occurs in the *Dogmatica* has been incorporated in the *Jus belli ac pacis*. All the juridical quotations, all the passages cited from classical authors of antiquity, and with which the *Jus Praedae* is ornamented, have been transferred to the *Jus belli*.' However, this does not mean that they are textually cited.[2]

In making use of the same ideas, Grotius gives them another form; however, they sometimes are copied word for word. And, a thing even more important, 'the legal system of both, which is the essential part, is identical.' Fruin [3] gives the following proof:

> The fundamental notion that waging war is a legal way of claiming under circumstances in which there is no court of law to pronounce sentence, and that therefore there are as many and just the same causes of war (*fontes belli*) as of legal claims—this notion is common to both books and also all that is inferred from it, especially this important consequence: that war may also be waged to punish injustice.

But this is not all. Fruin goes so far as to affirm that the only difference to be found between the *Commentary* and the treatise can be explained by the fact that the author of the latter work was older and had more experience than when he wrote the former, and that the older we are the more we reflect before making a pronouncement, and the less we are sure of ourselves. This is the case with the *Jus*

[1] *Op. cit.*, p. 58.

[2] Here is a striking example cited by Fruin (*op. cit.*, p. 58):

De Jure Praedae, pp. 148, 149: 'quod dixi aliis interdum quam militi praedam aut pecuniam ex ea redactam concedi solere, id ferme ita contigit ut his qui tributum ad bellum contulerant, tantumdem redderetur. Quin et ludos e manibiis instructos sub Regibus annotes.'

De Jure Belli, I, III, chap. vii, § 19: 'quod dixi aliis interdum extra milites praedum aut pecuniam e praeda redactam concedi solere, id ferme ita contigit ut his qui tributum ad bellum contulerant, tantundem redderetur. Ludos quoque ex manubiis interdum instructos notes.'

Such accurate correspondence, however, is only very rarely found.

[3] *Op. cit.*, pp. 58–9.

Belli. The tone is less assured, and in the treatise are to be found more exceptions to the rule. Of this Fruin gives examples. The doctrine of freedom of commerce is the same in both books, but to use the very words of Fruin :

What was passed over in the older is noticed in the later, namely that there is a difference between the ocean and the sea, between larger and smaller seas, and it is conceded that, as regards the latter, the freedom of trade and fishery may be limited by treaties and custom.

It may be added that the young Grotius, like the Romans, extended natural law to beasts as well as to men, but that the Grotius of the treatise excluded therefrom ' inferior beings '.

Moreover, the difference between the two works may be explained by their object. The *Commentary* was an argument to justify the right of commerce with the Indies and the resort to hostilities incident to its enjoyment. The treatise, on the contrary, was written in the interest of justice and of peace, which is its ripened fruit.

It is often said that the radical of to-day is the conservative of to-morrow. In his case the transition was perhaps not so rapid, but it is certain that Grotius in exile was more conservative than the Grotius of 1604, who doubtless expected important positions under the Government, but had not yet obtained them.

In other words, in the work of his youth he was more a partisan of liberty, but after filling posts which he lost by an unjust process, and enduring an arbitrary imprisonment and an unjustified exile, he became more a partisan of established order. In our days he would perhaps be considered reactionary, but it is probable that his preference for established government, for kings and princes, caused his system to be more readily accepted.

In this regard there is a marked difference between the two books. There is still another which is fundamental and largely responsible for the permanent influence of the treatise. The *Commentary* was a defence of war and an encouragement to hostilities on the part of a great commercial company ; the treatise, on the contrary, was, if we may accept the declaration of Grotius, a reasoned protest against war.

It may be considered that such modifications influenced his opinions regarding law, but the system of the *Commentary* as such remains intact, because both of them form an impersonal juridical system.

To the support of his thesis of 1604, Grotius invoked his predecessors. To sustain that of 1625, he appealed to the same authorities. The materials which had entered into the construction of his systematic edifice were before him. In 1604 he made use of them with the enthusiasm of youth ; in 1625 he was the master architect. The

expressions differ, and there are numerous details in the treatise which are missing in the *Commentary*. The basis is the same and it endures, and his successors, following in this his own example, made use of Grotius's materials for the construction of their own systems.

This is, according to the learned historian Fruin, the literary history of the masterpiece of Grotius. Better than any one he has collected the facts and demonstrated the relationship between the two works, of which he seems to prefer the first.

A good historian, he contents himself with showing how things happened in accordance with the scientific formula of our day. The literary origin is doubtless very interesting and would justify the profound research of the compatriot of Grotius.

Valuable in themselves and for the literature of international law, Professor Fruin's investigations are of fundamental importance to practical international law, to those who see in the very existence of nations the necessity for a law to regulate their mutual relations, a law similar to if not identical with domestic law, and in its principles overleaping national boundaries, but undergoing change in order to be adapted to the international society which law now controls, thanks to Grotius, his predecessors and successors.

Professor Fruin's essay on *An Unpublished Work of Grotius* also explains why the dissertations of his predecessors remained, so to speak, in the background. They meditated in the cloister, taught in the universities, published systems. Their works have had an indirect rather than a direct influence, because they did not spring from international needs. The *Commentary* of Grotius, on the contrary, was born of actual practice. The argument of the advocate had triumphed before the Prize Commission. The *Commentary* on a celebrated case has become more than the basis of the first systematic treatise on international law, the object of which was practical from a triple point of view. It sought to make clear that there was a law in time of war to control the actions of belligerents as well as to settle in a friendly way in time of peace the relations between nations, a text in which men of affairs could read of the questions most often arising, the principles according to which they should be decided, the reasons applicable to a greater or less degree to new problems, and upon which nations as well as individuals, and even more than they, should always rely in good faith, in time of war as in time of peace. These are the words with which Grotius ends his treatise and which Christian Powers should keep to heart.

To sum up in a word, the first systematic treatise had its birth in a court of justice ; its principles are developed like the principles of law ; they are studied in the universities of the world ; they are applied in the chancelleries, in municipal courts of justice, and in our

day an international court of justice has been established to apply them to disputes between States in the royal residence of the country of which Grotius was and remains one of its chiefest glories.

In the month of March 1625 there was put on sale for the first time a volume which justly has remained celebrated.

It was an international event even in its smallest details. The volume consists of three parts—*De Jure Belli ac Pacis Libri Tres*—which together form the first treatise of the law of nations.

This work, whose international influence has been so great, was international from its origin. The professional opinion given by its author in 1604 in a case of capture between Holland and Portugal, was enlarged to embrace peace as well as war, both of which thenceforth come under the principles of law.

The work of a Dutchman, the treatise was worked out in France, written in Latin, the international language of the day, printed in Paris, which was already a cosmopolitan centre, and exposed for sale at the fair of Frankfort, a free city of that Confederation of Germanic Nations which was the Holy Roman Empire.

Grotius lived at a time when the principle of authority no longer existed. A Dutchman, he emphatically rejected the direct or indirect authority of the universal empire which we may call the temporal authority of past centuries. A Protestant, he rejected the direct or indirect authority of the Universal Church, that is to say religious authority. He sought earnestly to supplant the old principles of authority by a new principle, and he found the latter in the natural law which may be described as the laic and universal authority. It was based upon fundamental conceptions, and for that reason universal ones.

The essential elements of his system are as follows. Man is an animal, but a social animal. It is the theory of Aristotle. Men associate together and unite in society, and each society, however small or large, has need of laws for its preservation. Even brigands have need of justice, as Aristotle remarks. The law must be just.

But man, while an animal, is an intelligent being; whence it results that the law must derive its needs from men living in society. Law is as universal as society; it conforms to the social nature of man and to the general needs of society. There is a primitive law such as that whereby property exists in common. But natural law, to use the expression of Grotius, can be developed and perfected so as to satisfy new conditions, and this gives rise to the division of things hitherto held in common and to the origin of private property. But this development came about, for the most part, in the prehistoric period of humanity.

As man is an intelligent animal, his law is the product of his

primitive intelligence. But man is also a reasonable animal, and law, even primitive law, has developed under the control of reason. The instinct of sociability is its origin ; preservation of society is its purpose ; justice is the means and the necessary condition for realizing this purpose ; reason, the supreme judge of application and even of intelligence.

For Grotius, the natural law is a rigid system, though susceptible of modifications.

But man even in society is, as regards his fellows, in a state of nature. It is necessary to progress beyond it, and it happens in this way according to Grotius. As a political animal, he is organized into a body politic. He forms a group with his fellows and from this group there results a political community, whether small or large. Men associate together, we may say, involuntarily, because sociability is an instinct ; they organize groups by agreement, because man is independent and in forming a group each member engages to maintain the group. The result is a political contract, the famous social contract. It is a principle of natural law to conform to the obligations of the contract, in default of which there is a sanction. We thus find ourselves face to face with the Grotian state, whether it be small or large. If the state emigrates, that is to say, leaves its territorial domain, exists, it persists, because the state is the people organized by the social contract. The form of the government makes no difference. The community is sovereign. The people may very well keep the sovereignty in its hands and exercise it directly by magistrates of its choice, responsible to it ; or the people may yield the sovereignty by contract to some particular person. In this way a personal sovereign appears, the prince or the king. But it is a question of domestic organization, for the state is sovereign from the constitutional point of view.

According to primitive natural law, men were equal and free, as having no superior. States, as such, are, according to this same natural law, free and equal, as having no superior. But, no more than individuals, can they live in isolation ; they are not sufficient unto themselves ; for their preservation they are impelled to associate. They are like individuals in the state of nature and the natural law applies to them as well as to individuals. But this primitive law may be perfected. How ? By contract between the states. The natural law which imposes itself and the law between the states which is created by custom, consent, or contract. The promise of states, like that of an individual, gives rise to an obligation and contractual law, just as natural law, executes itself. Thus we have the law of nations.

In this way we have, according to Grotius, two great systems of law : domestic law and the law between states. The first, the law

proper of the state, is obligatory within; the second, the external law or law between states, is obligatory between the states. Each of the two systems can be executed, either within or without, by suitable means and appropriate agents.

But natural law is in conformity with the divine law, although it exists of itself and without revelation; and justice exists, without reference to revelation. God himself cannot change justice, for what is just remains so regardless of its origin; but as God is just and the source of all justice, law, when it is revealed to us by God, is just, and it is to be supposed that He approves human justice, which is in agreement with divine justice. Thus it is that law, being separated from ethics, becomes laic but remains obligatory, as if it were of divine origin.

These are the principles of authority which Grotius sought to establish and upon which rest both national and international law. We may discuss the processes; we cannot reject the result, and this result is a system of law of nations founded upon domestic law with modifications suitable to make it applicable to the relations between equal and independent states.

Louis XIV could well say, 'I am the State,' with the approval of his French subjects. He could not say even with their approval, 'I am the community of nations.'

This should be clearly stated. As Grotius was of the opinion that there was a law which controlled the actions of Governments in time of war, and that there was a law which regulated the actions of individuals as well as Governments in time of peace, he was forced to state, from the technical point of view, the meaning which he ascribed to the expression 'right' in the sense of justice, a moral quality which attaches to the person and authorizes him to possess as his own such and such an object. When the moral quality is perfect, the right is called a faculty. In the contrary case it is called an aptitude.

A perfect right may be maintained even by force, because he who possesses the faculty has the right to act; but with regard to aptitude, he does not possess the right to act. However, he possesses the capacity to receive the right according to his merit or his worth, from which the right results, and at this moment the right ceases to be imperfect and becomes perfect.

In other words, the aptitude becomes a faculty. The difference from the legal point of view is that whoever possesses the faculty can protect it by all the means of procedure recognized by the state, and especially by proceedings in a court of justice.

The right creates a duty; the violation of duty, an obligation, and to fulfil this obligation there exist organs of the state. There is

this right with the sanction of the state. The faculty is the right in the strict and technical sense with which Grotius cites as an example the power, either over oneself or over others, ownership which is the faculty of exacting that which is due. There are two sorts of faculties. The first is ordinary. It is the right which a person has to require something from another, a right which exists even among individuals who are not united in society. The other is an extraordinary or superior right which belongs to the community against the persons and property of those who compose it.[1]

To employ the technical expressions used by Grotius, the faculty or the perfect right is the object of expletive justice executed or enforced by courts of justice due to the existence of a perfect right. The aptitude is the object of attributive justice—the distributive justice of Aristotle which attributes or distributes rights to persons, such as liberalities, clemency, inheritances, &c.

Right is therefore synonymous with law or statute, to make use of the exact language of Grotius :

> as a rule of moral actions imposing obligation to what is right . . . for counsels and instructions of every sort, which enjoin what is honourable indeed but do not impose an obligation, do not come under the term statute or law.

Whatever conforms to this right is just. To adopt the expression of Aristotle, there is natural law and voluntary law, a classification which Grotius considered the best, and these terms are used in the strict and technical sense of the words as creating an obligation which can be enforced and not as a counsel which may be followed or not.

Natural law is the rule of right reason which teaches us that an act is just in so far as it conforms to natural reason, and morally just or unjust and consequently forbidden or commended by God himself as the Author of nature. This natural law does not change. God Himself cannot change the scheme of things so that two and two do not make four.

The law in conformity with intelligence and the reason of man cannot be modified. To do so, it would be necessary to change human nature, which would be equivalent to overthrowing at once both the law and its object. But if we admit that natural law cannot be modified, it does not follow that the possessor of right under the law cannot renounce the consequences of the law. For example, a particular creditor can release the debtor from payment of his debt ; the law exists, but renunciation is made only of the execution of the

[1] For the analysis of the Grotian system see the paragraphs which Westlake devotes to the work of Grotius in his *Chapters on International Law* (Cambridge, 1894), pp. 36–51 of *Collected Papers of John Westlake on Public International Law* (Cambridge, 1914). This study of the English savant has been translated into French by Nys in his *Etudes sur les principes du Droit international* (Brussels and Paris, 1895), pp. 40–56.

obligation. The renunciation can be made general and we have the action of creditors who renounce payment from the bankrupt or who insist upon only a part of that which is due them. In the same way those who possess property can modify the conditions of tenancy according to the circumstances of the case.

The community, acting in the interest of the whole, as the individual does for his own account, can, in a general way, renounce by law payment of debts after a fixed period of time. It may even be prescribed that a proprietor loses his right of ownership, after occupation of his property by one who has no right to it, or what amounts to the same thing, that the right to this property is acquired by continued possession during a certain period. The community, applying always its superior right, can decree a general law which would release all bankrupt debtors.

It is equally possible to change, by the intervention of the community, the relations which exist between the proprietor and his tenant, by modifying the condition of tenancy. It is possible as well to reimburse the individual for losses sustained in the interest of the community and, to use a well-known example, it is possible to impose on the members of the community a tax equivalent to a confiscation, in the interest of society.

If these acts are in the interest of society, they are just ; if not, they are termed unjust. Society is organized in the interest of individuals. Law finds its origin in the necessity of self-preservation. The law must conform to the exigencies of society composed of intelligent beings and under the control of right reason. Who must be the judge of it ? Society.

The natural law is proved *a priori* by showing the conformity of an act with the right, and *a posteriori* by its general employment, which demands a common cause or the existence of a law, and Grotius cites the admirable statement of Tertullian to this effect, that a general acceptance or acceptance by a great number is tradition rather than error.

Voluntary law finds its origin in the will of free and intelligent individuals. The principal branch of human law is the civil law, or that of a state, which is the body of free persons who are associated under the protection of law for their well-being. More extensive than civil law is what is called the law of peoples or of nations, or, as we now prefer to call it, international law, which derives its obligatory force from the will of all the nations or of a considerable number of them. As with the civil law, it is proved by continued usage and the testimony of those who are accustomed to its study and usage. It is, as St. Chrysostom says, 'the creation of time and custom'. Arbitrariness is discarded in the relations either among individuals

before their union in a society, or in the society which composes a state, or even in that larger community of nations which it is attempted to organize.

Thus it is recognized, to use the language of Grotius himself, that

in such things it is meet for the nature of man, within the limitations of human intelligence, to follow the direction of a well-tempered judgement, being neither led astray by fear or the allurement of immediate pleasure, nor carried away by rash impulse.

To this exercise of judgement belongs moreover the rational allotment to each man, or to each social group, of those things which are properly theirs. . . .'

And there is a further passage of Grotius which is worthy of note because applicable to every society, be it great or small, to a state within itself or to the community of states :

This maintenance of the social order . . . is the source of law properly so-called. To this sphere of law belong the abstaining from that which is another's, the restoration to another of anything of his which we may have, together with any gain which we may have received from it ; the obligation to fulfil promises, the making good of a loss incurred through our fault, and the inflicting of penalties upon men according to their deserts.

The violation of these rights or the refusal to carry out the duties resulting from them gives rise to courts where suits may be brought to protect them and a government established to enforce them if necessary—a process in a state where the members, either by contract or by tacit consent, are united in a society and have created legal remedies for the protection of their rights.

In a society organized upon solid bases the individual is considered to have renounced his right to redress in person the violation of his rights ; the community is superior to him and has power over him. In such a state of affairs there are as many suits as there are violations of law. But states, despite centuries of effort, remain, one may say, isolated. They have no superior who can impose recourse to justice between nations to redress the violation of their rights. Nevertheless it remains true that there can be as many controversies as there are rights and as many suits as there are rights, but each state, having no superior, is obliged or authorized to conduct its own suits. Within a state it is a legal process on account of the juridical organization. Between states it is a process of force, to the extent that right precedes force between the states of the community of nations, as between the individuals of a single state.

The contents of the second book of the treatise of Grotius is very surprising, because it discusses questions relating to domestic law. The reason is simple, if Grotius's point of view is accepted and when it is remembered that he endeavoured to explain in his treatise 'the law of nature, the law of nations and the principles of public law', or whatever concerns the public government of a state.

The violation of a principle of national law can give rise to a suit

and as Grotius assures us in the very first words of his book, immediately after the Prolegomena, that

> Controversies among those who are not held together by a common bond of municipal law are related either to times of war or to times of peace. Such controversies may arise among those who have not yet united to form a nation, and those who belong to different nations, . . .

And it is said in the very first article :

> War, however, is undertaken in order to secure peace, and there is no controversy which may not give rise to war. In undertaking to treat the law of war, therefore, it will be in order to treat such controversies, of any and every kind, as are likely to arise.

Thus, according to his conception, Grotius felt obliged to treat of those matters which could give rise to controversies, since each violation could be the ground of a suit : ‘ the sources from which wars arise are as numerous as those from which lawsuits spring ; for where judicial settlement fails, war begins.’

These legitimate causes—we need not consider vain pretexts—are, according to most authors, three in number : ‘ Defense, recovery of what belongs to us, and punishment.’ Thus war begins a suit between nations and as litigation within a state cannot be begun without giving him who has caused the injury the opportunity to avoid being brought to justice, so war, which replaces the process of domestic law, should not be resorted to, if the nation violating the law proposes, as it should do, to submit the question to arbitration or any other pacific settlement.

If the immediate and ostensible object of Grotius was to subject the conduct of war to the rules of law, his other and less apparent purpose was to preserve uninterrupted the peace resulting from war.

In short, the principle of authority exists within the state and, although individuals are equal before the law, the law is superior to them and applies to the legal controversies arising between them. But in the absence of a formal engagement, each state remains the equal of every other. Therefore there is no superior among them, and as the law of nations is not self-executory. Therefore each state executes its own right against the state violating it, whence it results that controversies between nations can be regulated by force. This is war, but according to Grotius it ought not to be undertaken ‘ except for the enforcement of rights ’. It should be carried on ‘ only within the bounds of law and good faith ’ ; ‘ but in order that wars may be justified, they must be carried on with not less scrupulousness than judicial processes are wont to be ’.

It is quite evident that according to Grotius war occurs only for the want of an organization among states similar to that existing among individuals, whereby the superior will of the state is imposed upon its members, who by their free consent engage to bow before

the law of their own creation. But while awaiting the final victory of law, there are, he tells us, three means of avoiding war, in consequence of which ' a great many sufferings usually fall upon even innocent persons '.

The three methods which were of a kind to prevent in the future recourse to arms are : first, conferences ; secondly, arbitration ; and thirdly, lot. He mentions the latter method only in passing, but it is evident that he would prefer an accidental peace without bloodshed to an uncertain peace at the price of war.

For the friendly conference between the parties, he invokes the authority of his friend Cicero ' since there are two ways of settling a difference, the one by argument, the other by force. The former is characteristic ', it is still Cicero speaking, ' of man, the latter of brutes '. And still according to Cicero, ' We should have recourse ', he tells us, ' to the second only when it is not permitted to use the first '.

The second is arbitration, that is to say, a compromise at the hands of arbitrators for those who have not common judges. Grotius again invokes the authority of antiquity. This time it is Thucydides who holds ' it is not lawful to proceed against one who offers arbitration, just as against a wrongdoer '.

In a note to the text, Grotius gives approbation to the reply of the Gepidae to the Lombards : ' We are ready to settle our differences by recourse to an arbitration ; it is wicked violently to assail those who are willing to abide by the decision of a tribunal.'

The good Christian that he was, Grotius seeks to reinforce his arguments for the employment of arbitration by examples drawn from the Holy Scriptures :

> Christian Kings and states are bound to pursue this method of avoiding wars. For if certain arbiters were established both by Jews and by Christians, in order that the sentences of strange judges might be avoided by those of the true faith and this was prescribed by Paul, how much more should this be done to avoid a far greater disadvantage, that is, war ?

This is the application which Grotius wished to make of the doctrine of the Gospel to the circumstances of his own time, which unhappily remain those of our own :

> It would be advantageous, indeed in a degree necessary, to hold certain conferences of Christian powers, where those who have no interest at stake may settle the disputes of others, and where in fact, steps may be taken to compel parties to accept peace on fair terms.[1]

[1] There are writers in the international field who claim that Grotius borrowed the idea of international conferences just mentioned in the text from the *Nouveau Cynée*, the work of the Frenchman, Emeric Crucée, which appeared in Paris in 1623 and was reprinted in 1624, one year before the publication of Grotius's masterpiece. In this connexion see the analysis of van Vollenhoven, in his *On the Genesis of De Jure Belli ac Pacis* (*Grotius, 1625*), pp. 5–12.

The opinion of this Dutch savant is that the ' desire to advocate conferences to avoid war was ', as he puts it, ' in the air ', and if it is necessary to furnish an authority for Grotius it is rather the work

It is to be noticed that the difference must be arranged through disinterested parties, or rather by parties interested, for all powers are or should be interested in the preservation of peace as well as the powers in controversy, who, being present at the assembly, can state and defend their point of view to the others. Grotius does not enter into details and does not suggest the terms of an arrangement ; but apparently he thought that the powers in dispute could be constrained to accept the judgement of the conference. One naturally wonders if the preponderance of material power can impose the arrangement and make it accepted. Only the future can tell.

The system of international conference has been tried and has produced excellent results. To content ourselves with recent examples, the two Peace Conferences held at The Hague may be cited, and also the series of conferences of the American Republics. They are all a homage to the wisdom and foresight of Grotius.

Unfortunately, it happens only too often that a conference has been called at the end of a war to determine the conditions of peace. But nations might and should confer before the war, inasmuch as they are later obliged to do so. Should they come together before the war, it is reasonable to suppose that there would not be so many after-war conferences.

It is easy to see that Grotius was an advocate versed in active practice and a jurist to such an extent that he identified causes of action that might arise between individuals within a state with those that might happen in the international relations between states. He was not an advocate in the prize case for nothing, and, in this controversy between states before a Prize Commission, he pointed out the dawn of a system of organization among states which would substitute a court for war, legal procedure for an act of hostility, and the decision of a judge for the arbitrament of force.

We cannot say that Grotius would not have thought of the relations between nations from the legal point of view if he had not been an advocate ; but because of his legal training we see how natural it was for him to seek to apply to all nations the method of settlement through a process which could terminate the controversy between two states. For him this method was judicial procedure. He has laid down the principles of law which the wisdom of nations should complete. The advocate can play a beneficent role in the betterment of the world.

But Grotius was not a pacifist, either within or without the state. As an advocate he was peace-loving, preferring the solution of

of Luis Molina, a member of the Society of Jesus, who published his *De Justitia et Jure* in 1614, in which a suggestion is found that might have served as an inspiration to Grotius. For the text of this passage see van Vollenhoven, *op. cit.*, p. 24, Appendix E.

every difference by the application of the rules of law. He even said that the great Richelieu hated him ' for the sole reason that I loved peace ', and in an intimate letter to his brother, dated May 4, 1641 : ' But if Christian princes listened to my warnings, there would be no more war among them ; they would prefer to abandon some of their right or to choose upright arbitrators.'

It is difficult to put a value on the direct influence of Grotius ; it is impossible to trace his indirect influence. There is an example of the latter which deserves to be recalled.

There was a young man whose name was John Jay, a descendant of an American Huguenot family which, in order to escape the persecution following the revocation of the Edict of Nantes, took refuge in the New World.

Born in the English colony of New York in 1745, he studied at King's College, now become the great Columbia University. On graduating at the head of his class he delivered, as is the custom in the United States, a formal address, and he chose for his subject : ' The Advantages of Peace '. As he was destined for the bar, his teacher, one of the most eminent lawyers of the time, advised him to devote himself to the reading of the treatise of Grotius as the best introduction to the study and, eventually, to the practice of law. He spent a full year on the work.

He became successively Chief Justice of the Supreme Court of New York, President of the Congress of the Colonies in revolt, and one of the Commissioners to negotiate at Paris the Treaty of Peace with the mother country. After his return to the United States he became Secretary for Foreign Affairs of the Confederation and in 1785 he recommended the Congress for the first time, in a report which shows the influence of Grotius, to settle, by a mixed commission, boundary questions between Great Britain and his own country, so far as they were not susceptible of arrangement through diplomatic channels. Congress did not follow up this step. Later, as Chief Justice of the Supreme Court of the United States and Secretary of State ad interim until the return of Jefferson from Paris to take that post, he advised the first President of the United States, General George Washington, to submit his report again to the Senate that the differences between the two countries might be adjusted by a mixed commission. President Washington added to the report a statement to the effect that the differences of the United States with all the nations of the world should be settled in an amicable way.

The Senate did not act.

As envoy on special mission to Great Britain, with which the situation was then very serious, John Jay concluded on November 19, 1794, the treaty which appropriately bears his name and which

submitted to mixed commissions the controversies between the two contracting parties.

The success of the Commission organized under Article 7 of the treaty manifested anew the importance of arbitration for the pacific settlement of the bitterest disputes. In this way arbitration was again introduced, not only in Great Britain, but also in the modern world.

May the youth of 1925 devote themselves to the study of the treatise of Grotius, and among them be found another John Jay.

The great Mirabeau, who maintained that law is the sovereign of the world and Mars the tyrant, said to the 'Batavians' on the eve of the French revolution that Grotius was the eternal honour of their nation and that 'the work of his which should forever preserve his memory, even when it shall have become entirely useless, is his book on peace and war, the first treatise ever made to reduce to a system the most beautiful and most useful of all sciences'.

This is why we have a law of nations ; this it why we shall have some day peace between nations ; these are the services that Grotius rendered to humanity above even the nations.

The world of Grotius was small : it consisted of Europe, the country of Christianity, to the west of the frontier of Poland, and of Europe which confronted the Ottoman Empire, the home of Islam ready to profit by the internal religious strife of Christianity. The Indies were already visited and conquests made ; and America, beyond the Atlantic, was visited for the purpose of planting colonies.

The world of our day is large, but Europe still remains its intellectual centre, and it is still France which holds the mandate of modern civilization ; America is composed of twenty-one independent republics and a vast country which has its own government in the bosom of the British Empire ; Asia is becoming conscious of its existence ; Africa is emerging and Australia reveals itself a continent.

All is changed.

The nations are co-operating in the common task of civilization and they are submitting their individual wills to the rules of one law of nations. Hugo Grotius, a Dutchman exiled from his own country, has become a citizen of the world and an international legislator, and from The Hague he causes judgement to be passed on the nations through the Permanent Court of International Justice.

* * *

The treatise on the law of nations is living evidence of the fact that Grotius was a jurist of profound achievements ; and we know from his earlier life and from the history of his country that he was a lawyer in active practice and of great repute. The historian Motley says in his *Life and Death of John of Barneveld*, who in his

old age leaned heavily upon Grotius, that, 'At the age of seventeen he was already an advocate in full practice before the supreme tribunals of The Hague, and when twenty-three years old he was selected by Prince Maurice from a list of three candidates for the important post of Fiscal or Attorney General of Holland.' [1]

But he was not only Attorney-General, he was the Pensionary, that is Chief Magistrate of Rotterdam, and member of the States of Holland and of the States-General. We know that he was interested, and to his detriment, in the religious conflicts of the time; so that we have to deal with a lawyer of standing and in active practice, and the official legal adviser of the Province of Holland. As the Chief Magistrate of Rotterdam and as member of the States of Holland, he was deeply immersed in matters of state and in the partisan politics of the day.

Without dwelling upon his religious activity, the author of the *Commentary* and of the treatise on international law was, therefore, lawyer, statesman, and theologian; and the treatise on the law of nations is the result of his eminence in each of these walks of life. We are dealing with a practical man who, himself, was dealing with a practical subject which had been the cause of profound study and reflection on his part, and the outcome of professional activity. The treatise has held the attention of the world because of these qualities and of these qualifications; it is not a theoretical disquisition, although it is full of theory; it is not a philosophical dissertation, for Grotius was rather a logician than a philosopher; it was the amplification of a professional brief in the light of many years' experience after the case was ended. His contemporaries looked upon him as a man of affairs and as an international lawyer; and Sweden, at that time sharing with France the domination of the world, appointed him its Ambassador at the Court of France during the Thirty Years' War because of his experience in international law and with international relations. Indeed, that he wished to be looked upon as a man of affairs clearly appears in his epitaph, which he wrote himself with his own hand:

Grotius hic Hugo est: batavus, captivus et exsul,
Legatus regni, Suecia magna, tui.

The immense influence of the treatise of Grotius is doubtless due to the practical experience which he had had as a lawyer and as a man of affairs before its final composition.[2]

[1] Vol. ii (New York, 1902), pp. 403-4.

[2] In the critical biography which W. S. M. Knight has published, in this year of the tercentenary of the publication of Grotius's masterpiece, there is a passage expressing in a different and perhaps better way the reason for the pre-eminence of Grotius and the influence of his work: 'He made of Justice the foundation clearly and succinctly such of his system. . . . His detailed examination of public

The writings of the learned on questions of international law are entitled to respect ; the writings of the learned who have had experience are followed by nations. The contentions of nations are fought out in the chancelleries of the world. The claim of a nation is transmitted to the Ministry of Foreign Affairs, where it is examined in the light of its origin and according to the interest of the country. A principle of law is opposed to defeat the claim by the country against which it is brought. Better than principle is the practice of one or other nation in dispute, and stronger still are the precedents of many nations, which are likewise the permanent evidence of agreement upon conflicting views. It is the process of the law court on a larger scale where principle is opposed to principle, and precedent to precedent. The court is enlightened by the argument of contending counsel ; in full knowledge of the cause at issue and of the principles of law advanced as applicable it decides. A judgement is a precedent because it has been carefully considered and argued ; on the other hand, a judgement rendered without argument is treated with scant respect, and judges are wont from the bench to inform counsel who cite such a judgement as an authority, that it was decided without the benefit of argument.

Conceived in the practice of law, born in the law court, and matured in the study, the treatise on the law of nations has prevailed and still prevails, because of this extraordinary combination of theory and practice in the exposition of a subject in which nations are and must be interested, if their relations are to be decided by principles and their practical application.

It is rare that any man born of woman has a title to continued remembrance ; it is still rarer that he has more than one title ; and certainly there can be few in the annals of history who have more varied and more permanent claims to remembrance than Grotius, who in his youth was called the ' Miracle of Holland ',[1] and who has justified that title before posterity.

Great as are these titles, he is held in grateful remembrance for what many have called an incident in a busy life, but which we know was his very life, his work on the law of nations, which, written at various times, culminated in the three books on the law of war and peace.

If it is immortality to live in the lives of others, how sure must the immortality be of him who lived not merely in the lives of those with whom he came into contact when he was still a thing of flesh

and private law easily recalled to men's minds the inevitableness of Justice as both root and essence of that law. Then, almost unconsciously, they are moved on to international law, the law of war and of peace, as to a development of a similarly constituted law.' *The Life and Works of Hugo Grotius* (London, 1925), p. 210.

[1] Bynkershoek calls Grotius ὁ Μέγας in his *De Dominio Maris*, p. 374.

sic

and blood, but who survives in the lives of subsequent centuries, and whose life has influenced nations and bids fair to control their actions for a period to which we can assign no definite bounds?

His book has become the law of nations of which it was the first systematic exposition, if, indeed, he is not the father of the system. Sir James Mackintosh,[1] a man of large and varied learning, impressionable and subject to emotion, has said, and truly, of the work of Grotius, that it 'is perhaps the most complete that the world has yet owed, at so early a stage in the progress of any science, to the genius and learning of one man'. And the judicious Hallam, who was not prone to exaggeration, and whose views are not coloured by enthusiasm, as he was a man of cold and discriminating judgement, may be considered as pronouncing the judgement of mankind upon Grotius and his services to international law when he says:

> The book may be considered as nearly original, in its general platform, as any work of man in an advanced stage of civilization and learning can be. It is more so, perhaps, than those of Montesquieu and Smith. No one had before gone to the foundations of international law so as to raise a complete and consistent superstructure; few had handled even separate parts, or laid down any satisfactory rules concerning it.[2]

Expressed differently, the views of Mackintosh and Hallam are to the effect that if everything which Grotius had written, or spoken, should pass away, leaving us only the three books *On the Law of War and Peace*, he would, indeed, have justified his existence.

It would be exaggeration, but it would be pardonable exaggeration, to say that his life and his works would alone give to his country a claim to remembrance, if the waters of oblivion should threaten it.

Perhaps the best comment upon his life and influence is that, although he gave war first place in the rights and duties of nations, any man writing to-day would give peace that predominance; in other words, the whole standard of thought has been changed, peace being in conception, and bound to be in fact, the normal state of things in any system of law; whereas war is at best an abnormal condition and as such opposed to a settlement of disputes according to any system of law which is itself derived from justice.

James Brown Scott.

The Hague,
August 5, 1925.

[1] *A Discourse on the Study of the Law of Nature and Nations* (London, 1835), pp. 20–1.

[2] Henry Hallam, *Introduction to the Literature of Europe* (fourth edition, London, 1847), vol. ii, p. 545.

TRANSLATORS' PREFATORY NOTE

The invitation to prepare an English translation of the *De Jure Belli ac Pacis* by Hugo Grotius was extended to Mr. Kelsey by Mr. Scott, of the Carnegie Endowment for International Peace, in June 1918. At that time the opinion was quite general that the World War would probably last for two years longer; and it was thought that if the translation could be made ready before the peace negotiations should begin, the publication would be particularly opportune. The invitation was accepted with the condition that the work might be divided, in order to facilitate progress.

The preparation of the manuscript was well under way when the Armistice came, and during the subsequent peace negotiations the undertaking was allowed to lag. Then, too, near the close of 1919, Mr. Kelsey was obliged to go abroad on a scientific mission which involved an absence of two years from the United States. Hence the delay in publication, which has now become opportune by reason of the tercentenary of the first publication of the *De Jure Belli ac Pacis* in 1625.

The translation, however, was made from the text of the edition published in Amsterdam in 1646, because this embodied the last revision of the author. In making the final draft for the printer, the translators have consulted the other editions published in the lifetime of Grotius and have had the advantage of consulting also the new edition of the text by P. C. Molhuysen, which was published in Leyden in 1919.

Of the translation it is necessary only to say that the aim has been to express the thought as Grotius might have expressed it if he had been writing in English rather than Latin. The previous translations into English, French, and German have been utilized; the one that has been found most useful is that by P. Pradier-Fodéré, to which an acknowledgement of special obligation is due.

In the division of the work, Mr. Kelsey is responsible for the translation to the end of Book I and for the final form of the remainder of the translation, also for the translation of the Commentary on the Epistle of Paul to Philemon; Mr. Sanders made the first draft of the translation for Book II, chapters 1–20, and Book III, chapters 18–25; Mr. Boak made the first draft of the translation for Book II, chapters 21–6, and Book III, chapters 1–17. Mr. Reeves revised the entire

manuscript with special reference to the choice of the legal terms and phrases which would most clearly express the concepts of Grotius for readers of English to-day. Mr. Wright has collaborated in the work by reading the entire manuscript, by verifying the references in which the treatise abounds, and by correcting the proofs and preparing the indexes. Part of the manuscript was read also by Mr. H. E. Yntema, and preliminary work on the Index of Authors was done by James E. Dunlap.

In the notes as well as the text the titles of many works cited by Grotius in the Latin form are translated into English. While this is contrary to current practice, it was thought that not a few readers who are unfamiliar with the works themselves would welcome such translations as suggesting the character of the treatises to which Grotius referred. In the Index of Authors Cited, at the end of this volume, the English form of the title is in all cases followed by the Latin form which Grotius used.

A General Index to the translation appears at the end of this volume.

The translators regret that the scope of the undertaking did not permit the addition of foot-notes which should aim to throw light on Grotius's use of his sources, and thus to contribute to a better understanding of his method of work and point of view. Full references to the authors and works cited by Grotius will in most cases be found in the foot-notes in the edition of the text by Molhuysen; there still remain some references which thus far it has not been possible to verify. In this translation corrections of references given by Grotius, and additional references supplied by the translators, are set off by brackets. References to the Vulgate have been added where this differs from the Authorized Version.

The figures in heavy brackets inserted in the text and foot-notes indicate the beginnings of pages of the edition of 1646, which is photographically reproduced in Volume I.

A few other additions by the translators have been inserted in brackets.

THE TRANSLATORS.

UNIVERSITY OF MICHIGAN,
March 18, 1925.

[*The Title-Page of the Edition of 1646*]

HUGO GROTIUS
ON
THE LAW OF WAR AND PEACE
THREE BOOKS

Wherein are set forth the law of nature and of nations
Also the principles of public law

NEW EDITION

With the annotations of the author

Now much enlarged in consequence of his last revision
before his death

Whereto have been added also Notes on

THE EPISTLE OF PAUL TO PHILEMON



Amsterdam
JOHAN BLAEU
1646

[iii]

HUGO GROTIUS

TO THE MOST CHRISTIAN KING OF FRANCE AND NAVARRE

LOUIS XIII

Most eminent of Kings: This work presumes to inscribe your revered name in dedication because of confidence not in itself, nor in its author, but in its theme. For it has been written on behalf of justice, a virtue in so distinguishing a manner yours that in consequence, both from your own merits and from the general recognition of mankind, you have received a surname truly worthy of so great a king; you are now everywhere known by the name of Just no less than that of Louis. To the generals of ancient Rome titles drawn from the names of conquered peoples, from Crete, Numidia, Africa, Asia, and other lands, seemed the height of glory; but how much more glorious is your title, by which you are designated as an enemy everywhere, and vanquisher always, not of a nation, or of a person, but of that which is unjust!

The kings of Egypt thought it a great thing if men could say of them that one was devoted to his father, another to his mother, still another to his brothers. But of how slight moment are such particulars in the case of your title, which in its scope embraces not only such traits but all else that can be conceived as beautiful and virtuous! You are Just, when you honour the memory of your father, a king great beyond characterization, by following in his footsteps; [iv] Just, when you train your brother in all possible ways, but in no way more effectively than by your own example; Just, when you arrange marriages of the utmost distinction for your sisters; Just, when you call back to life laws that are on the verge of burial, and with all your strength set yourself against the trend of an age which is rushing headlong to destruction; Just, but at the same time merciful, when from subjects, whom a lack of knowledge of your goodness has turned aside from the path of duty, you take away nothing except the opportunity to do wrong, and when you offer no violence to souls that hold views different from your own in matters of religion; Just, and at the same time compassionate, when by the exercise of your authority you lighten the burdens of oppressed peoples and of downcast princes, and do not suffer too much to be left to Fortune.

Such extraordinary kindness, characteristic of you, and as like to that of God as the limitations of human nature permit, constrains me as an individual and on my own behalf to offer to you thanks even in this public dedication. For just as the heavenly bodies not only flood the vast expanses of the universe but suffer their force to descend to each living thing, so you, a most beneficent star upon the earth, not content to lift up princes and to succour peoples, willed to become a protection and solace also to me, who had been badly treated in my native country.

In order to complete the sum of virtues comprised in justice, to your acts of a public nature we must add the blamelessness and purity of your private life, which are worthy to be admired not alone by men but even by the spirits of heaven. For how many of the common run of mankind, how many even of [v] those who have cut themselves off from the world, are found to be as free from all faults as you are, though you occupy a station in life which is beset on all sides with innumerable enticements to wrongdoing? How great a thing it is in the midst of affairs, among the crowd, at the Court, surrounded by men who set examples of wrongdoing in so many different ways, to attain to that uprightness of character which to others, even in seclusion, comes with difficulty, and often not at all! This truly is to deserve not only the name of Just but even, while you are still living, that of Saint, which the unanimous agreement of good men conferred after death upon your ancestors Charlemagne and Louis [1]; this is to be in very truth Most Christian, not merely by a right inhering in your lineage but by a right inhering in yourself.

But while no aspect of justice is foreign to you, that nevertheless with which the matter of this work is concerned—the principles underlying war and peace—is in a peculiar sense your province because you are a king, and further, because you are King of France. Vast is this realm of yours, which stretches from sea to sea, across so many prosperous lands so great in extent; but you possess a kingdom greater than this, in that you do not covet kingdoms belonging to others. It is worthy of your devotion to duty, worthy of your exalted estate, not to attempt to despoil any one of his rights by force of arms, not to disturb ancient boundaries; but in war to continue the work of peace, and not to commence war save with the desire to end it at the earliest possible moment.

How noble it will be, how glorious, how joyful to your conscience, when God shall some day summon you to His kingdom, which alone is better than yours, to be able with boldness [vi] to

[1] [The reference is to Louis IX, who died near Tunis in 1270, while engaged in a Crusade, and was canonized in 1297; see Appendix, pages 863–4.]

say: 'This sword I received from Thee for the defence of justice, this I give back to Thee guilty of no blood rashly shed, stainless and innocent.' Hence it will come to pass that the rules which we now seek to draw from books will in the future be drawn from your acts as from a complete and perfect exemplification.

This will be a very great achievement. Yet the peoples of Christian lands are so bold as to ask of you something further, that, with the extinction of warfare everywhere, through your initiative peace may come again, not only to the nations but also to the churches, and that our time may learn to subject itself to the discipline of that age [1] which all we who are Christians acknowledge in true and sincere faith to have been Christian. Our hearts, wearied with strifes, are encouraged to such a hope by the friendship lately entered into between you and the King of Great Britain, who is most wise and singularly devoted to that holy peace; a friendship cemented by the most auspicious marriage of your sister.[2] Hard the task is by reason of partisan passions, fired by hatreds which blaze more fiercely day by day; but no task except one fraught with difficulty, except one that all others have given up in despair, is meet for so great kings.

May the God of Peace, the God of Justice, O just king, O peace-making king, heap upon your Majesty, which is nearest unto His own, not only all other blessings but with them also the distinction of having accomplished this task. MDCXXV.

[1] [The period of the Early Church, before there was a division into sects.]

[2] [In December 1624 Richelieu arranged a treaty of marriage between Henrietta Maria, sister of Louis XIII, and Charles, son of James I of England. James died in March 1625. In the following June Henrietta came to England and was married to Charles I.

PROLEGOMENA

TO THE THREE BOOKS

ON THE LAW OF WAR AND PEACE

1. The municipal law of Rome and of other states has been treated by many, who have undertaken to elucidate it by means of commentaries or to reduce it to a convenient digest. That body of law, however, which is concerned with the mutual relations among states or rulers of states, whether derived from nature, or established by divine ordinances, or having its origin in custom and tacit agreement, few have touched upon. Up to the present time no one has treated it in a comprehensive and systematic manner; yet the welfare of mankind demands that this task be accomplished.

2. Cicero justly characterized as of surpassing worth a knowledge of treaties of alliance, conventions, and understandings of peoples, kings and foreign nations; a knowledge, in short, of the whole law of war and peace. And to this knowledge Euripides gives the preference over an understanding of things divine and human; for he represents Theoclymenus as being thus addressed: [*For Balbus*, vi. 15.] [*Helena*, 928 f.]

For you, who know the fate of men and gods,
What is, what shall be, shameful would it be
To know not what is just.

3. Such a work is all the more necessary because in our day, as in former times, there is no lack of men who view this branch of law with contempt as having no reality outside of an empty name. On the lips of men quite generally is the saying of Euphemus, which Thucydides quotes,[1] that in the case of a king or imperial city nothing is unjust which is expedient. Of like implication is the statement that for those whom fortune favours might makes right, and that the administration of a state cannot be carried on without injustice.

Furthermore, the controversies which arise between peoples or kings generally have Mars as their arbiter. That war is irreconcilable with all law is a view held not alone by the ignorant populace; expressions are often let slip by well-informed and thoughtful men which lend countenance to such a view. Nothing is more common than the assertion of antagonism between law and arms. Thus Ennius says: [In Gellius, xx. 10.]

Not on grounds of right is battle joined,
But rather with the sword do men
Seek to enforce their claims.

[1] [xix] The words are in Book VI [VI. lxxxv]. The same thought is found in Book V [V. lxxxix], where the Athenians, who at the time of speaking were very powerful, thus address the Melians: 'According to human standards those arrangements are accounted just which are settled when the necessity on both sides is equal; as for the rest, the more powerful do all they can, the more weak endure.'

[*Art of Poetry*, 122.] Horace, too, describes the savage temper of Achilles in this wise:

> Laws, he declares, were not for him ordained;
> By dint of arms he claims all for himself.

[Lucan, I. 225.] Another poet depicts another military leader as commencing war with the words:

> Here peace and violated laws I leave behind.

[Plutarch, *Fort. of Alex.*, 330 E.] [*Apoth.*, 202 D; *Marius*, xxviii = 421 E.] Antigonus when advanced in years ridiculed a man who brought to him a treatise on justice when he was engaged in besieging cities that did not belong to him. Marius declared that the din of arms made it impossible for him to hear the voice of the laws.[1] Even Pompey, whose expression of countenance was so mild, dared to say: 'When I am in arms, am I to think of laws?'[2]

4. Among Christian writers a similar thought finds frequent expression. [*An Answer to the Jews*, vii] A single quotation from Tertullian may serve in place of many: 'Deception, harshness, and injustice are the regular business of battles.' They who so think will no doubt wish to confront us with this passage in Comedy: [Terence *Eunuch*, I. i. 16 ff.]

> [viii] These things uncertain should you, by reason's aid,
> Try to make certain, no more would you gain
> Than if you tried by reason to go mad.

5. Since our discussion concerning law will have been undertaken in vain if there is no law, in order to open the way for a favourable reception of our work and at the same time to fortify it against attacks, this very serious error must be briefly refuted. In order that we may not be obliged to deal with a crowd of opponents, let us assign to them a pleader. And whom should we choose in preference to Carneades? For he had attained to so perfect a mastery of the peculiar tenet of his Academy that he was able to devote the power of his eloquence to the service of falsehood not less readily than to that of truth.

Carneades, then, having undertaken to hold a brief against justice, in particular against that phase of justice with which we are concerned, was able to muster no argument stronger than this, that, for reasons of expediency, men imposed upon themselves laws, which vary according to customs, and among the same peoples often undergo changes as times change; moreover that there is no law of

[1] In Plutarch Lysander displaying his sword says [*Apothegms, Lysander*, iii = 190 E]: 'He who is master of this is in the best position to discuss questions relating to boundaries between countries.'

In the same author Caesar declares [*Caesar*, xxxv = 725 B]: 'The time for arms is not the time for laws.'

Similarly Seneca, *On Benefits*, IV. xxxviii [IV. xxxvii]: 'At times, especially in time of war, kings make many grants with their eyes shut. One just man cannot satisfy so many passionate desires of men in arms; no one can at the same time act the part of a good man and good commander.'

[2] This view-point of Pompey in relation to the Mamertines Plutarch expresses thus [*Pompey*, x = 623 D]: 'Will you not stop quoting laws to us who are girt with swords?' Curtius says in Book IX [IX. iv. 7]: 'Even to such a degree does war reverse the laws of nature.'

nature; because all creatures, men as well as animals, are impelled by nature toward ends advantageous to themselves; that, consequently, there is no justice, or, if such there be, it is supreme folly, since one does violence to his own interests if he consults the advantage of others.

6. What the philosopher here says, and the poet reaffirms in verse, [Horace, *Satires*, I. iii. 113.]

> And just from unjust Nature cannot know,

must not for one moment be admitted. Man is, to be sure, an animal, but an animal of a superior kind, much farther removed from all other animals than the different kinds of animals are from one another; evidence on this point may be found in the many traits peculiar to the human species. But among the traits characteristic of man is an impelling desire for society, that is, for the social life—not of any and every sort, but peaceful, and organized according to the measure of his intelligence, with those who are of his own kind; this social trend the Stoics called 'sociableness'.[1] Stated as a universal truth, therefore, the assertion that every animal is impelled by nature to seek only its own good cannot be conceded.

7. Some of the other animals, in fact, do in a way restrain the appetency for that which is good for themselves alone, to the advantage, now of their offspring, now of other animals of the same species.[2]

[1] Chrysostom, *On Romans*, Homily XXXI [Homily V, i, on chap. i, verse 31]: 'We men have by nature a kind of fellowship with men; why not, when even wild beasts in their relation to one another have something similar?'

See also the same author, *On Ephesians*, chap. i [Homily I], where he explains that the seeds of virtue have been implanted in us by nature. The emperor Marcus Aurelius, a philosopher of parts, said [V. xvi]: 'It was long ago made clear that we were born for fellowship. Is it not evident that the lower exist for the sake of the higher, and the higher for one another's sake?'

[2] There is an old proverb, 'Dogs do not eat the flesh of dogs'. Says Juvenal [*Sat.* xv. 163, 159]:

> Tigress with ravening tigress keeps the peace;
> The wild beast spares its spotted kin.

There is a fine passage of Philo, in his commentary on the Fifth Commandment, which he who will may read in Greek. As it is somewhat long, I shall here quote it only once and in Latin [Philo, *On the Ten Commandments*, xxiii, in English as follows]:

'Men, be ye at least imitators of dumb brutes. They, trained through kindness, know how to repay in turn. Dogs defend our homes; they even suffer death for their masters, if danger has suddenly come upon them. It is said that shepherd dogs go in advance of their flocks, fighting till death, if need be, that they may protect the shepherds from hurt. Of things disgraceful is not the most disgraceful this, that in return of kindness man should be outdone by a dog, the gentlest creature by the most fierce?

'But if we fail to draw our proper lesson from the things of earth, let us pass to the realm of winged creatures that make voyage through the air, that from them we may learn our duty. Aged storks, unable to fly, stay in their nests. Their offspring fly, so to say, over all lands and seas, seeking sustenance in all places for their parents; these, in consideration of their age, deservedly enjoy quiet, abundance, even comforts. And the younger storks console themselves for the irksomeness of their voyaging [xx] with the consciousness of their discharge of filial duty and the expectation of similar treatment on the part of their offspring, when they too have grown old. Thus they pay back, at the time when needed, the debt they owe, returning what they have received; for from others they cannot obtain sustenance either at the beginning of life, when they are small, or, when they have become old, at life's end. From no other teacher than nature herself have they learned to care for the aged, just as they themselves were cared for when they were young.

'Should not they who do not take care of their parents have reason to hide themselves for very

This aspect of their behaviour has its origin, we believe, in some extrinsic intelligent principle, because with regard to other actions, which involve no more difficulty than those referred to, a like degree of intelligence is not manifest in them. The same thing must be said of children. In children, even before their training has begun, some disposition to do good to others appears, as Plutarch sagely observed; thus sympathy for others comes out spontaneously at that age. The mature man in fact has knowledge which prompts him to similar actions under similar conditions,[1] together with an impelling desire for society, for the gratification of which he alone among animals possesses a special instrument, speech. He has also been endowed with the faculty of knowing and of acting in accordance with general principles. Whatever accords with that faculty is not common to all animals, but peculiar to the nature of man.

[*Consolation*, 608 D.]

8. This maintenance of the social order,[2] which we have roughly sketched, and which is consonant with human intelligence, is the source of law properly so called. To this sphere of law belong the abstaining from that which is another's,[3] the restoration to another of anything of his which we may have, together with any gain which

shame when they hear this—they that neglect those whom alone, or above all others, they ought to help, especially when by so doing they are not really called upon to give, but merely to return what they owe? Children have as their own nothing to which their parents do not possess a prior claim; their parents have either given them what they have, or have furnished to them the means of acquisition.'

In regard to the extraordinary care of doves for their young, see Porphyry, *On Abstaining from Animal Food*, Book III; concerning the regard of the parrot-fish and lizard-fish for their kind, see Cassiodorus, [*Variae*,] XI. xl.

[1] Marcus Aurelius, Book IX [IX. xlii]: 'Man was born to benefit others'; also [IX. ix]: 'It would be easier to find a thing of earth out of relation with the earth than a human being wholly cut off from human kind'. The same author in Book X [X. ii]: 'That which has the use of reason necessarily also craves civic life.'

Nicetas of Chonae [*On Isaac Angelus*, III. ix]: 'Nature has ingrained in us, and implanted in our souls, a feeling for our kin.' Add what Augustine says, *On Christian Doctrine*, III. xiv.

[2] Seneca, *On Benefits*, Book IV, chap. xviii: 'That the warm feeling of a kindly heart is in itself desirable you may know from this, that ingratitude is something which in itself men ought to flee from, since nothing so dismembers and destroys the harmonious union of the human race as does this fault. Upon what other resource, pray tell, can we rely for safety, than mutual aid through reciprocal services? This alone it is, this interchange of kindnesses, which makes our life well equipped, and well fortified against sudden attacks.

'Imagine ourselves as isolated individuals, what are we? The prey, the victims of brute beasts—blood most cheap, and easiest to ravage; for to all other animals strength sufficient for their own protection has been given. The beasts that are born to wander and to pass segregate lives are provided with weapons; man is girt round about with weakness. Him no strength of claws or teeth makes formidable to others. To man [deity] gave two resources, reason and society; exposed as he was to danger from all other creatures, these resources rendered him the most powerful of all. Thus he who in isolation could not be the equal of any creature, is become the master of the world.

'It was society which gave to man dominion over all other living creatures; man, born for the land, society transferred to a sovereignty of a different nature, bidding him exercise dominion over the sea also. Society has checked the violence of disease, has provided succour for old age, has given comfort against sorrows. It makes us brave because it can be invoked against Fortune. Take this away and you will destroy the sense of oneness in the human race, by which life is sustained. It is, in fact, taken away, if you shall cause that an ungrateful heart is not to be avoided on its own account.'

[3] Porphyry, *On Abstaining from Animal Food*, Book III [III. xxvi]: 'Justice consists in the abstaining from what belongs to others, and in doing no harm to those who do no harm.'

we may have received from it; the obligation to fulfil promises, the making good of a loss incurred through our fault, and the inflicting of penalties upon men according to their deserts.

9. From this signification of the word law there has flowed another and more extended meaning. Since over other animals man has the advantage of possessing not only a strong bent towards social life, of which we have spoken, but also a power of discrimination which enables him to [ix] decide what things are agreeable or harmful (as to both things present and things to come), and what can lead to either alternative: in such things it is meet for the nature of man, within the limitations of human intelligence, to follow the direction of a well-tempered judgement, being neither led astray by fear or the allurement of immediate pleasure, nor carried away by rash impulse. Whatever is clearly at variance with such judgement is understood to be contrary also to the law of nature, that is, to the nature of man.

10. To this exercise of judgement belongs moreover the rational allotment [1] to each man, or to each social group, of those things which are properly theirs, in such a way as to give the preference now to him who is more wise over the less wise, now to a kinsman rather than to a stranger, now to a poor man rather than to a man of means, as the conduct of each or the nature of the thing suggests. Long ago the view came to be held by many, that this discriminating allotment is a part of law, properly and strictly so called; nevertheless law, properly defined, has a far different nature, because its essence lies in leaving to another that which belongs to him, or in fulfilling our obligations to him.

11. What we have been saying would have a degree of validity even if we should concede that which cannot be conceded without the utmost wickedness, that there is no God, or that the affairs of men are of no concern to Him. The very opposite of this view has been implanted in us partly by reason, partly by unbroken tradition, and confirmed by many proofs as well as by miracles attested by all ages. Hence it follows that we must without exception render obedience to God as our Creator, to Whom we owe all that we are and have; especially since, in manifold ways, He has shown Himself supremely good and supremely powerful, so that to those who obey Him He is able to give supremely great rewards, even rewards that are eternal, since He Himself is eternal. We ought, moreover, to believe that He has willed to give rewards, and all the more should we cherish such a belief if He has so promised in plain words; that He has done this, we Christians believe, convinced by the indubitable assurance of testimonies.

[1] Ambrose treats this subject in his first book *On Duties* [I. xxx].

12. Herein, then, is another source of law besides the source in nature, that is, the free will of God,[1] to which beyond all cavil our reason tells us we must render obedience. But the law of nature of which we have spoken, comprising alike that which relates to the social life of man and that which is so called in a larger sense, proceeding as it does from the essential traits implanted in man, can nevertheless rightly be attributed to God,[2] because of His having willed that such traits exist in us. In this sense, too, Chrysippus and the Stoics used to say that the origin of law should be sought in no other source than Jupiter himself; and from the name Jupiter [3] the Latin word for law (*ius*) was probably derived.

13. There is an additional consideration in that, by means of the laws which He has given, God has made those fundamental traits more manifest, even to those who possess feebler reasoning powers; and He has forbidden us to yield to impulses drawing us in opposite directions—affecting now our own interest, now the interest of others—in an effort to control more effectively our more violent impulses and to restrain them within proper limits.

14. But sacred history, besides enjoining rules of conduct, in no slight degree reinforces man's inclination towards sociableness by teaching that all men are sprung from the same first parents. In this sense we can rightly affirm also that which Florentinus asserted (*Dig.* I. i. 3.) from another point of view, that a blood-relationship has been established among us by nature; consequently it is wrong for a man to set a snare for a fellow-man. Among mankind generally one's parents are as it were divinities,[4] and to them is owed an obedience which, if not unlimited, is nevertheless of an altogether special kind.

15. Again, since it is a rule of the law of nature to abide by pacts (for it was necessary that among men there be some method of obligating themselves one to another, and no other natural method can be imagined), out of this source the bodies of municipal law have arisen. For those who had associated themselves with some

[1] [xxi] Hence, in the judgement of Marcus Aurelius, Book IX [IX. i]: 'He who commits injustice is guilty of impiety.'

[2] Chrysostom, *On First Corinthians*, xi. 3 [Homily XXVI. iii]: 'When I say nature I mean God, for He is the creator of nature.' Chrysippus in his third book *On the Gods* [Plutarch, *On the Contradictions of the Stoics*, ix = *Morals*, 1035 c]: 'No other beginning or origin of justice can be found than in Jupiter and common nature; from that source must the beginning be traced when men undertake to treat of good and evil.'

[3] Unless perhaps it would be more true to say that the Latin word for 'right', *ius*, is derived, by process of cutting down, from the word for 'command', *iussum*, forming *ius*, genitive *iusis*, just as the word for 'bone', *os*, was shortened from *ossum*; *iusis* afterwards becoming *iuris*, as *Papirii* was formed from *Papisii*, in regard to which see Cicero, *Letters*, Book IX. xxi [*Ad Fam.* IX. xxi. 2].

[4] Hierocles, in his commentary on the *Golden Verse* [rather *How parents should be treated*, quoted by Stobaeus, *Anthology*, tit. lxxix. 53], calls parents 'gods upon earth'; Philo, *On the Ten Commandments* [chap. xxiii], 'Visible gods, who imitate the Unbegotten God in giving life'. Next after the relationship between God and man comes the relationship between parent and child; Jerome, *Letters*, xcii [cxvii. 2]. Parents are the likenesses of gods; Plato, *Laws*, Book XI [XI. 11]. Honour is due to parents as to gods; Aristotle, *Nicomachean Ethics*, Book IX, chap. ii.

group, or had subjected themselves to a man or to men, [x] had either expressly promised, or from the nature of the transaction must be understood impliedly to have promised, that they would conform to that which should have been determined, in the one case by the majority, in the other by those upon whom authority had been conferred.

16. What is said, therefore, in accordance with the view not only of Carneades but also of others, that

> Expediency is, as it were, the mother
> Of what is just and fair,[1]

is not true, if we wish to speak accurately. For the very nature of man, which even if we had no lack of anything would lead us into the mutual relations of society, is the mother of the law of nature. But the mother of municipal law is that obligation which arises from mutual consent; and since this obligation derives its force from the law of nature, nature may be considered, so to say, the great-grandmother of municipal law.

The law of nature nevertheless has the reinforcement of expediency; for the Author of nature willed that as individuals we should be weak, and should lack many things needed in order to live properly, to the end that we might be the more constrained to cultivate the social life. But expediency afforded an opportunity also for municipal law, since that kind of association of which we have spoken, and subjection to authority, have their roots in expediency. From this it follows that those who prescribe laws for others in so doing are accustomed to have, or ought to have, some advantage in view.

17. But just as the laws of each state have in view the advantage of that state, so by mutual consent it has become possible that certain laws should originate as between all states, or a great many states; and it is apparent that the laws thus originating had in view the advantage, not of particular states, but of the great society of states. And this is what is called the law of nations, whenever we distinguish that term from the law of nature.

This division of law Carneades passed over altogether. For he divided all law into the law of nature and the law of particular countries. Nevertheless if undertaking to treat of the body of law which is maintained between states—for he added a statement in regard to war and things acquired by means of war—he would surely have been obliged to make mention of this law.

18. Wrongly, moreover, does Carneades ridicule justice as folly.

[1] In regard to this passage Acron, or some other ancient interpreter of Horace [*Sat.* I. iii. 98]: 'The poet is writing in opposition to the teachings of the Stoics. He wishes to show that justice does not have its origin in nature but is born of expediency.' For the opposite view see Augustine's argument, *On Christian Doctrine*, Book III, chap. xiv.

For since, by his own admission, the national who in his own country obeys its laws is not foolish, even though, out of regard for that law, he may be obliged to forgo certain things advantageous for himself, so that nation is not foolish which does not press its own advantage to the point of disregarding the laws common to nations. The reason in either case is the same. For just as the national, who violates the law of his country in order to obtain an immediate advantage,[1] breaks down that by which the advantages of himself and his posterity are for all future time assured, so the state which transgresses the laws of nature and of nations cuts away also the bulwarks which safeguard its own future peace. Even if no advantage were to be contemplated from the keeping of the law, it would be a mark of wisdom, not of folly, to allow ourselves to be drawn towards that to which we feel that our nature leads.

[Horace, *Satires*, I. iii. 111.]

19. Wherefore, in general, it is by no means true that

> You must confess that laws were framed
> From fear of the unjust,[2]

[*Republic*, II. ii; *Gorgias*, xxxviii.]

a thought which in Plato some one explains thus, that laws were invented from fear of receiving injury, and that men are constrained by a kind of force to cultivate justice. For that relates only to the institutions and laws which have been devised to facilitate the enforcement of right; as when many persons in themselves weak, in order that they might not be overwhelmed by the more powerful, leagued themselves together to establish tribunals and by combined force to maintain these, that as a united whole they might prevail against those with whom as individuals they could not cope.

[Plutarch, *Solon*, xv.]

And in this sense we may readily admit also the truth of the saying that right is that which is acceptable to the stronger; so that we may understand that law fails of its outward effect unless it has a sanction behind it. In this way Solon accomplished very great results, as he himself used to declare,

> [xi] By joining force and law together,
> Under a like bond.

[*Gorgias*, lxxx.]

20. Nevertheless law, even though without a sanction, is not entirely void of effect. For justice brings peace of conscience, while injustice causes torments and anguish, such as Plato describes, in the breast of tyrants. Justice is approved, and injustice condemned, by

[1] This comparison Marcus Aurelius pertinently uses in Book IX [IX. xxiii]: 'Every act of thine that has no relation, direct or indirect, to the common interest, rends thy life and does not suffer it to be one; such an act is not less productive of disintegration than he is who creates a dissension among a people.' The same author, Book XI [XI. viii]: 'A man cut off from a single fellow-man cannot but be considered as out of fellowship with the whole human race.' In effect, as the same Antoninus says [VI. liv]: 'What is advantageous to the swarm is advantageous to the bee.'

[2] As Ovid says [*Metamorphoses*, VIII. 59]:

> Strong is the cause when arms the cause maintain.

the common agreement of good men. But, most important of all, in God injustice finds an enemy, justice a protector. He reserves His judgements for the life after this, yet in such a way that He often causes their effects to become manifest even in this life, as history teaches by numerous examples.

21. Many hold, in fact, that the standard of justice which they insist upon in the case of individuals within the state is inapplicable to a nation or the ruler of a nation. The reason for the error lies in this, first of all, that in respect to law they have in view nothing except the advantage which accrues from it, such advantage being apparent in the case of citizens who, taken singly, are powerless to protect themselves. But great states, since they seem to contain in themselves all things required for the adequate protection of life, seem not to have need of that virtue which looks toward the outside, and is called justice.

22. But, not to repeat what I have said, that law is not founded on expediency alone, there is no state so powerful that it may not some time need the help of others outside itself, either for purposes of trade, or even to ward off the forces of many foreign nations united against it. In consequence we see that even the most powerful peoples and sovereigns seek alliances, which are quite devoid of significance according to the point of view of those who confine law within the boundaries of states. Most true is the saying, that all things are uncertain the moment men depart from law.

23. If no association of men can be maintained without law, as Aristotle showed by his remarkable illustration drawn from brigands,[1] [Stobaeus, x. 50.] surely also that association which binds together the human race, or binds many nations together, has need of law; this was perceived [Cicero, *On Duties*, I. xlv. 159.] by him who said that shameful deeds ought not to be committed even for the sake of one's country. Aristotle takes sharply to task[2] [*Politics*, VII. ii.]

[1] Chrysostom, *On Ephesians*, chap. iv [Homily IX, iii]: 'But how does it happen, some one will say, that brigands live on terms of peace? And when? Tell me, I pray. This happens, in fact, when they are not acting as brigands; for if, in dividing up their loot, they did not observe the precepts of justice and make an equitable apportionment, you would see them engaged in strifes and battles among themselves.'

Plutarch [*Pyrrhus*, ix = 388 A] quotes the saying of Pyrrhus, that he would leave his kingdom to that one of his children who should have the sharpest [xxii] sword, declaring that this has the same implication as the verse of Euripides in the *Phoenician Maidens* [line 68]:

That they with gory steel the house divide.

He adds, moreover, the noble sentiment: 'So inimical to the social order, and ruthless, is the determination to possess more than is one's own!'

Cicero, *Letters*, XI. xvi [*Ad Fam.* IX. xvi. 3]: 'All things are uncertain when one departs from law.' Polybius, Book IV [IV. xxix. 4]: 'This above all other causes breaks up the private organizations of criminals and thieves, that they cease to deal fairly with one another; in fine, that good faith among them has perished.'

[2] Plutarch, *Agesilaus* [xxxvii = 617 D]: 'In their conception of honour the Lacedaemonians assign the first place to the advantage of their country; they neither know nor learn any other kind of right than that which they think will advance the interests of Sparta.'

In regard to the same Lacedaemonians the Athenians declared, in Thucydides, Book V [V. cv]: 'In relations with one another and according to their conception of civil rights they are most strict

those who, while unwilling to allow any one to exercise authority over themselves except in accordance with law, yet are quite indifferent as to whether foreigners are treated according to law or not.

24. That same Pompey, whom I just now quoted for the opposite view, corrected the statement which a king of Sparta had made, that that state is the most fortunate whose boundaries are fixed by spear and sword; he declared that that state is truly fortunate which has justice for its boundary line. On this point he might have invoked the authority of another king of Sparta, who gave the preference to justice over bravery in war,[1] using this argument, that bravery ought to be directed by a kind of justice, but if all men were just they would have no need for bravery in war.

Bravery itself the Stoics defined as virtue fighting on behalf of equity. [x=p. 132 B C.] Themistius in his address to Valens argues with eloquence that kings who measure up to the rule of wisdom make account not only of the nation which has been committed to them, but of the whole human race, and that they are, as he himself says, not 'friends of the Macedonians' alone, or 'friends of the Romans',[2] but 'friends of mankind'. The name of Minos[3] became odious to future ages for no other reason than this, that he limited his fair-dealing to the boundaries of his realm.

25. Least of all should that be admitted which some people imagine, that in war all laws are in abeyance. On the contrary war ought not to be undertaken except for the enforcement of rights; when once undertaken, it should be carried on only within the bounds of law and good faith. Demosthenes well said that war is directed against those who cannot be held in check by judicial processes. [*On the Affairs in the Chersonese*, viii. 29.] For judgements are efficacious against those who feel that they are too weak to resist; against those who are equally strong, or think that they are, wars [xii] are undertaken. But in order that wars may be justified, they must be carried on with not less scrupulousness than judicial processes are wont to be.

26. Let the laws be silent, then, in the midst of arms, but only the laws of the State, those that the courts are concerned with, that

in their practice of virtue. But with respect to others, though many considerations bearing upon the subject might be brought forward, he will state the fact in a word who will say that in their view what is agreeable is honourable, what is advantageous is just.'

[1] Hearing that the king of the Persians was called great, Agesilaus remarked: 'Wherein is he greater than I, if he is not more just?' The saying is quoted by Plutarch [*Apophthegms, Agesilaus*, lxiii = *Morals*, 213 C].

[2] Marcus Aurelius exceedingly well remarks [VI. xliv]: 'As Antoninus, my city and country are Rome; as a man, the world.' Porphyry, *On Abstaining from Animal Food*, Book III [III. xxvii]: 'He who is guided by reason keeps himself blameless in relation to his fellow-citizens, likewise also in relation to strangers and men in general; the more submissive to reason, the more godlike a man is.'

[3] In regard to Minos there is a verse of an ancient poet:

> Under the yoke of Minos all the island groaned.

On this point see Cyril, *Against Julian*, Book VI.

are adapted only to a state of peace; not those other laws, which are of perpetual validity and suited to all times. It was exceedingly well said by Dio of Prusa, that between enemies written laws, that is, laws of particular states, are not in force, but that unwritten laws[1] are in force, that is, those which nature prescribes, or the agreement of nations has established. [*Orations*, lxxvi.] This is set forth by that ancient formula of the Romans, 'I think that those things ought to be sought by means of a war that is blameless and righteous.' [Livy, I. xxxii. 12.]

The ancient Romans, as Varro noted, were slow in undertaking war, and permitted themselves no licence in that matter, because they held the view that a war ought not to be waged except when free from reproach. [In Nonius, XII.] Camillus said that wars should be carried on justly no less than bravely; Scipio Africanus, that the Roman people commenced and ended wars justly. [Livy, V. xxvii. 6; XXX. xvi. 9.] In another passage you may read: 'War has its laws no less than peace.' [V. xxvii. 6.] Still another writer admires Fabricius as a great man who maintained his probity in war—a thing most difficult—and believed that even in relation to an enemy there is such a thing as wrongdoing. [Seneca, *Letters*, cxx. 6.]

27. The historians in many a passage reveal how great in war is the influence of the consciousness that one has justice on his side;[2] they often attribute victory chiefly to this cause. Hence the proverbs, that a soldier's strength is broken or increased by his cause; that he who has taken up arms unjustly rarely comes back in safety; that

[1] Thus King Alphonse, being asked whether he owed a greater debt to books or to arms, said that from books he had learned both the practice and laws of arms. Plutarch [*Camillus*, x = 134 B]: 'Among good men certain laws even of war are recognized, and a victory ought not to be striven for in such a way as not to spurn an advantage arising from wicked and impious actions.'

[2] Pompey well says in Appian [*Civil Wars*, II. viii. 51]: 'We ought to trust in the gods and in the cause of a war which has been undertaken with the honourable and just [xxiii] purpose of defending the institutions of our country.' In the same author Cassius [*Civil Wars*, IV. xii. 97]: 'In wars the greatest hope lies in the justice of the cause.' Josephus, *Antiquities of the Jews*, Book XV [XV. v. 3]: 'God is with those who have right on their side.'

Procopius has a number of passages of similar import. One is in the speech of Belisarius, after he had started on his expedition to Africa [*Vandalic War*, I. xii. 21]: 'Bravery is not going to give the victory, unless it has justice as a fellow-soldier.' Another is in the speech of the same general before the battle not far from Carthage [I. xii. 19]. A third is in the address of the Lombards to the Herulians, where the following words, as corrected by me, are found [*Gothic War*, II. xiv]: 'We call to witness God, the slightest manifestation of whose power is equal to all human strength. He, as may well be believed, making account of the causes of war, will give to each side the outcome of battle which each deserves.' This saying was soon afterward confirmed by a wonderful occurrence.

In the same author Totila thus addresses the Goths [*Gothic War*, III. viii]: 'It cannot, it cannot happen, I say, that they who resort to violence and injustice can win renown in fighting; but as the life of each is, such the fortune of war that falls to his lot.' Soon after the taking of Rome Totila made another speech bearing on the same point [*Gothic War*, III. xxi].

Agathias, Book II [*Histories*, II. i]: 'Injustice and forgetfulness of God are to be shunned always, and are harmful, above all, in war and in time of battle.' This statement he elsewhere proves by the notable illustrations of Darius, Xerxes, and the Athenians in Sicily [*Histories*, II. x]. See also the speech of Crispinus to the people of Aquileia, in Herodian, Book VIII [*Histories*, VIII. iii. 5, 6].

In Thucydides, Book VII [VII. xviii], we find the Lacedaemonians reckoning the disasters which they had suffered in Pylus and elsewhere as due to themselves, because they had refused a settlement by arbitration which had been offered them. But as afterward the Athenians, having committed many wicked deeds, refused arbitration, a hope of greater success in their operations revived in the Lacedaemonians.

hope is the comrade of a good cause; and others of the same purport.

No one ought to be disturbed, furthermore, by the successful outcome of unjust enterprises. For it is enough that the fairness of the cause exerts a certain influence, even a strong influence upon actions, although the effect of that influence, as happens in human affairs, is often nullified by the interference of other causes. Even for winning friendships, of which for many reasons nations as well as individuals have need, a reputation for having undertaken war not rashly nor unjustly, and of having waged it in a manner above reproach, is exceedingly efficacious. No one readily allies himself with those in whom he believes that there is only a slight regard for law, for the right, and for good faith.

28. Fully convinced, by the considerations which I have advanced, that there is a common law among nations, which is valid alike for war and in war, I have had many and weighty reasons for undertaking to write upon this subject. Throughout the Christian world I observed a lack of restraint in relation to war, such as even barbarous races should be ashamed of; I observed that men rush to arms for slight causes, or no cause at all, and that when arms have once been taken up there is no longer any respect for law, divine or human; it is as if, in accordance with a general decree, frenzy had openly been let loose for the committing of all crimes.

29. Confronted with such utter ruthlessness many men, who are the very furthest from being bad men, have come to the point of forbidding all use of arms to the Christian,[1] whose rule of conduct above everything else comprises the duty of loving all men. To this opinion sometimes John Ferus and my fellow-countryman Erasmus seem to incline, men who have the utmost devotion to peace in both Church and State; but their purpose, as I take it, is, when things have gone in one direction, to force them in the opposite direction, as we are accustomed to do, that they may come back to a true middle ground. But the very effort of pressing too hard in the opposite direction is often so far from being helpful that it does harm, because in such arguments the detection of what is extreme is easy, and results in weakening the influence of other statements which are well within the bounds of truth. For both extremes therefore a remedy must be found, that men may not believe either that nothing is allowable, or that everything is.

[Johann Wild]

30. At the same time through devotion to study in private life I have wished—as the only course now open to me, undeservedly

[1] Tertullian, *On the Resurrection of the Flesh* [chap. xvi]: 'The sword which has become blood-stained honourably in war, and has thus been employed in man-killing of a better sort.'

forced out from my native land, which had been graced by so many of my labours—to contribute somewhat to the philosophy of the law, which previously, in public service, I practised with the utmost degree of probity of which I was capable. [xiii] Many heretofore have purposed to give to this subject a well-ordered presentation; no one has succeeded. And in fact such a result cannot be accomplished unless—a point which until now has not been sufficiently kept in view—those elements which come from positive law are properly separated from those which arise from nature. For the principles of the law of nature, since they are always the same, can easily be brought into a systematic form; but the elements of positive law, since they often undergo change and are different in different places, are outside the domain of systematic treatment, just as other notions of particular things are.

31. If now those who have consecrated themselves to true justice should undertake to treat the parts of the natural and unchangeable philosophy of law, after having removed all that has its origin in the free will of man; if one, for example, should treat legislation, another taxation, another the administration of justice, another the determination of motives, another the proving of facts, then by assembling all these parts a body of jurisprudence could be made up.

32. What procedure we think should be followed we have shown by deed rather than by words in this work, which treats by far the noblest part of jurisprudence.

33. In the first book, having by way of introduction spoken of the origin of law, we have examined the general question, whether there is any such thing as a just war; then, in order to determine the differences between public war and private war, we found it necessary to explain the nature of sovereignty—what nations, what kings possess complete sovereignty; who possess sovereignty only in part, who with right of alienation, who otherwise; then it was necessary to speak also concerning the duty of subjects to their superiors.

34. The second book, having for its object to set forth all the causes from which war can arise, undertakes to explain fully what things are held in common, what may be owned in severalty; what rights persons have over persons, what obligation arises from ownership; what is the rule governing royal successions; what right is established by a pact or a contract; what is the force of treaties of alliance; what of an oath private or public, and how it is necessary to interpret these; what is due in reparation for damage done; in what the inviolability of ambassadors consists; what law controls the burial of the dead, and what is the nature of punishments.

35. The third book has for its subject, first, what is permissible in war. Having distinguished that which is done with impunity, or even that which among foreign peoples is defended as lawful, from that which actually is free from fault, it proceeds to the different kinds of peace, and all compacts relating to war.

36. The undertaking seemed to me all the more worth while because, as I have said, no one has dealt with the subject-matter as a whole, and those who have treated portions of it have done so in a way to leave much to the labours of others. Of the ancient philosophers nothing in this field remains; either of the Greeks, among whom Aristotle had composed a book with the title *Rights of War*, or—what was especially to be desired—of those who gave their allegiance to the young Christianity. Even the books of the ancient Romans on fetial law have transmitted to us nothing of themselves except the title. Those who have made collections of the cases which are called 'cases of conscience' have merely written chapters on war, promises, oaths, and reprisals, just as on other subjects.

37. I have seen also special books on the law of war, some by theologians, as Franciscus de Victoria, Henry of Gorkum, William Matthaei;[1] others by doctors of law, as John Lupus, Franciscus Arias, Giovanni da Legnano, Martinus Laudensis. All of these, however, have said next to nothing upon a most fertile subject; most of them have done their work without system, and in such a way as to intermingle and utterly confuse what belongs to the law of nature, to divine law, to the law of nations, to civil law, and to the body of law which is found in the canons.

38. What all these writers especially lacked, the illumination of history, the very learned [xiv] Faur undertook to supply in some chapters of his *Semestria*, but in a manner limited by the scope of his own work, and only through the citation of authorities. The same thing was attempted on a larger scale, and by referring a great number of examples to some general statements, by Balthazar Ayala; and still more fully, by Alberico Gentili. Knowing that others can derive profit from Gentili's painstaking, as I acknowledge that I have, I leave it to his readers to pass judgement on the shortcomings of his work as regards method of exposition, arrangement of matter, delimitation of inquiries, and distinctions between the various kinds of law. This only I shall say, that in treating controversial questions it is his frequent practice to base his conclusions on a few examples, which are not in all cases worthy of approval, or even to follow the opinions of modern jurists, formulated in arguments of which not

[1] To these add the work of Joannes de Carthagena, published at Rome in 1609.

a few were accommodated to the special interests of clients, not to the nature of that which is equitable and upright.

The causes which determine the characterization of a war as lawful or unlawful Ayala did not touch upon. Gentili outlined certain general classes, in the manner which seemed to him best; but he did not so much as refer to many topics which have come up in notable and frequent controversies.

39. We have taken all pains that nothing of this sort escape us; and we have also indicated the sources from which conclusions are drawn, whence it would be an easy matter to verify them, even if any point has been omitted by us. It remains to explain briefly with what helps, and with what care, I have attacked this task.

First of all, I have made it my concern to refer the proofs of things touching the law of nature to certain fundamental conceptions which are beyond question, so that no one can deny them without doing violence to himself. For the principles of that law, if only you pay strict heed to them, are in themselves manifest and clear, almost as evident as are those things which we perceive by the external senses; and the senses do not err if the organs of perception are properly formed and if the other conditions requisite to perception are present. Thus in his *Phoenician Maidens* Euripides represents [494–6.] Polynices, whose cause he makes out to have been manifestly just, as speaking thus:

> Mother, these words, that I have uttered, are not
> Inwrapped with indirection, but, firmly based
> On rules of justice and of good, are plain
> Alike to simple and to wise.[1]

The poet adds immediately a judgement of the chorus, made up of women, and barbarian women at that, approving these words.

40. In order to prove the existence of this law of nature, I have, furthermore, availed myself of the testimony of philosophers,[2] historians, poets, finally also of orators. Not that confidence is to be reposed in them without discrimination; for they were accustomed to serve the interests of their sect, their subject, or their cause. But when many at different times, and in different places, affirm the same thing as certain, that ought to be referred to a universal cause; and this cause, in the lines of inquiry which we are following, must be either a correct conclusion drawn from the principles of nature,

[1] The same Euripides represents Hermione as saying to Andromache [*Andromache*, 243]:

> Not under laws barbaric do men live
> In this our city;

and Andromache as answering [ibid., 244]:

> What there is base, here too not blameless is.

[2] Why should not one avail himself of the testimony of the philosophers, when Alexander Severus constantly read Cicero *On the Commonwealth* and *On Duties*? [Lampridius, *Alexander Severus*, xxx. 2.]

or common consent. The former points to the law of nature; the latter, to the law of nations.

The distinction between these kinds of law is not to be drawn from the testimonies themselves (for writers everywhere confuse the terms law of nature and law of nations), but from the character of the matter. For whatever cannot be deduced from certain principles by a sure process of reasoning, and yet is clearly observed everywhere, must have its origin in the free will of man.

41. These two kinds of law, therefore, I have always particularly sought to distinguish from each other and from municipal law. Furthermore, in the law of nations I have distinguished between that which is truly and in all respects law, and that which produces merely a kind of outward effect simulating that primitive law, as, for example, the prohibition to resist by force, or even the duty of defence in any place by public force, in order to secure some advantage, or for [xv] the avoidance of serious disadvantages. How necessary it is, in many cases, to observe this distinction, will become apparent in the course of our work.

With not less pains we have separated those things which are strictly and properly legal, out of which the obligation of restitution arises, from those things which are called legal because any other classification of them conflicts with some other stated rule of right reason. In regard to this distinction of law we have already said something above.

42. Among the philosophers Aristotle deservedly holds the foremost place, whether you take into account his order of treatment, or the subtlety of his distinctions, or the weight of his reasons. Would that this pre-eminence had not, for some centuries back, been turned into a tyranny, so that Truth, to whom Aristotle devoted faithful service, was by no instrumentality more repressed than by Aristotle's name!

For my part, both here and elsewhere I avail myself of the liberty of the early Christians, who had sworn allegiance to the sect of no one of the philosophers, not because they were in agreement with those who said that nothing can be known—than which nothing is more foolish—but because they thought that there was no philosophic sect whose vision had compassed all truth, and none which had not perceived some aspect of truth. Thus they believed that to gather up into a whole the truth which was scattered among the different philosophers[1] and dispersed among the sects, was in reality to establish a body of teaching truly Christian.

[1] The words are those of Lactantius, *Divine Institutes*, Book VI, chap. ix [VII. vii. 4].

Justin, *First Apology* [*Second Apology*, chap. xiii]: 'Not because the teachings of Plato are altogether different from the teachings of Christ, but because they do not completely harmonize,

43. Among other things—to mention in passing a point not foreign to my subject—it seems to me that not without reason some of the Platonists and early Christians [1] departed from the teachings of Aristotle in this, that he considered the very nature of virtue as a mean in passions and actions. That principle, once adopted, led him to unite distinct virtues, as generosity and frugality, into one; to assign to truth extremes between which, on any fair premiss, there is no possible co-ordination, boastfulness, and dissimulation; and to apply the designation of vice to certain things which either do not exist, or are not in themselves vices, such as contempt for pleasure and for honours, and freedom from anger against men.

44. That this basic principle, when broadly stated, is unsound, becomes clear even from the case of justice. For, being unable to find in passions and acts resulting therefrom the too much and the too little opposed to that virtue, Aristotle sought each extreme in the things themselves with which justice is concerned. Now in the first place this is simply to leap from one class of things over into another class, a fault which he rightly censures in others; then, for a person to accept less than belongs to him may in fact under unusual conditions constitute a fault, in view of that which, according to the circumstances, he owes to himself and to those dependent on him; but in any case the act cannot be at variance with justice, the essence of which lies in abstaining from that which belongs to another.

By equally faulty reasoning Aristotle tries to make out that adultery committed in a burst of passion, or a murder due to anger, is not properly an injustice. Whereas nevertheless injustice has no other essential quality than the unlawful seizure of that which belongs to another; and it does not matter whether injustice arises from avarice, from lust, from anger, or from ill-advised compassion; or from an overmastering desire to achieve eminence, out of which instances of the gravest injustice constantly arise. For to disparage such incitements, with the sole purpose in view that human society may not receive injury, is in truth the concern of justice.

45. To return to the point whence I started, the truth is that

as the teachings of others do not [xxiv] —for example, those of the Stoics, the poets, and the writers of history. For each one of these spoke rightly in part, in accordance with the reason which had been implanted in him, perceiving what was consistent therewith.'

Tertullian [*On the Soul*, xx]: 'Seneca often on our side'; but the same writer also warns us [*An Answer to the Jews*, ix] that the entire body of spiritual teachings was to be found in no man save Christ alone.

Augustine, *Letters*, ccii [xci. 3]: 'The rules of conduct which Cicero and other philosophers recommend are being taught and learned in the churches that are increasing all over the world.' On this point, if time is available, consult the same Augustine in regard to the Platonists, who, he says, with changes in regard to a few matters can be Christians; *Letters*, lvi [cxviii. 21]; *On the True Religion*, chap. iii, and *Confessions*, Book VII, chap. ix, and Book VIII, chap. ii.

[1] Lactantius treats this subject at length in the *Institutes*, VI. xv, xvi, xvii. Says Cassiodorus [Peter of Blois, *On Friendship*, chap. *Quod affectus sine consensu non multum prosit vel obsit*]: 'It is advantageous or harmful to be moved not by feelings, but in accordance with feelings.'

some virtues do tend to keep passions under control; but that is not because such control is a proper and essential characteristic of every virtue. Rather it is because right reason, which virtue everywhere follows, in some things prescribes the pursuing of a middle course,[1] in others stimulates to the utmost degree. We cannot, for example, worship God too much; for superstition errs not by [xvi] worshipping God too much, but by worshipping in a perverse way. Neither can we too much seek after the blessings that shall abide for ever, nor fear too much the everlasting evils, nor have too great hatred for sin.

[IV. ix. 14.] With truth therefore was it said by Aulus Gellius, that there are some things of which the extent is limited by no boundaries—the greater, the more ample they are, the more excellent. Lactantius, having discussed the passions at great length, says:

[*Divine Institutes*, VI. xvi. 7.] 'The method of wisdom consists in controlling not the passions, but their causes, since they are stirred from without. And putting a check upon the passions themselves ought not to be the chief concern, because they may be feeble in the greatest crime, and very violent without leading to crime.'

Our purpose is to make much account of Aristotle, but reserving in regard to him the same liberty which he, in his devotion to truth, allowed himself with respect to his teachers.

46. History in relation to our subject is useful in two ways: it supplies both illustrations and judgements. The illustrations have greater weight in proportion as they are taken from better times and better peoples; thus we have preferred ancient examples, Greek and Roman, to the rest. And judgements are not to be slighted, especially when they are in agreement with one another; for by such statements the existence of the law of nature, as we have said, is in a measure proved, and by no other means, in fact, is it possible to establish the law of nations.

47. The views of poets and of orators do not have so great weight; and we make frequent use of them not so much for the purpose of gaining acceptance by that means for our argument, as of adding, from their words, some embellishment to that which we wished to say.

48. I frequently appeal to the authority of the books which men inspired by God have either written or approved, nevertheless

[1] Agathias, Book V, in a speech of Belisarius [*Histories*, V. xviii]: 'Of the emotions of the soul those ought in every case to be seized in which there is found, pure and unmixed, an impulse in harmony with the requirements of duty and worthy to be chosen. Those emotions, however, which have a trend and inclination toward evil, are not to be utilized in all cases, but only so far as they contribute to our advantage. That good judgement is a blessing pure and unmixed no one would deny. In anger the element of energy is praiseworthy, but what exceeds the proper limit is to be avoided, as involving disadvantage.'

with a distinction between the Old Testament and the New. There are some who urge that the Old Testament sets forth the law of nature. Without doubt they are in error, for many of its rules come from the free will of God. And yet this is never in conflict with the true law of nature; and up to this point the Old Testament can be used as a source of the law of nature, provided we carefully distinguish between the law of God, which God sometimes executes through men, and the law of men in their relations with one another.

This error we have, so far as possible, avoided, and also another opposed to it, which supposes that after the coming of the New Testament the Old Testament in this respect was no longer of use. We believe the contrary, partly for the reasons which we have already given, partly because the character of the New Testament is such that in its teachings respecting the moral virtues it enjoins the same as the Old Testament or even enjoins greater precepts. In this way we see that the early Christian writers used the witnesses of the Old Testament.

49. The Hebrew writers,[1] moreover, most of all those who have thoroughly understood the speech and customs of their people, are able to contribute not a little to our understanding of the thought of the books which belong to the Old Testament.

50. The New Testament I use in order to explain—and this cannot be learned from any other source—what is permissible to Christians. This, however—contrary to the practice of most men—I have distinguished from the law of nature, considering it as certain that in that most holy law a greater degree of moral perfection is enjoined upon us than the law of nature, alone and by itself, would require. And nevertheless I have not omitted to note the things that are recommended to us rather than enjoined, that we may know that, while the turning aside from what has been enjoined is wrong and involves the risk of punishment, a striving for the highest excellence implies a noble purpose and will not fail of its reward.

51. The authentic synodical canons are collections embodying the general principles of divine law as applied to cases which come up; they either show what the divine law enjoins, or urge us to that which God would fain persuade. And this truly is the mission of the Christian Church, to transmit those things which were transmitted to it by God, and [xvii] in the way in which they were transmitted.

Furthermore customs which were current, or were considered praiseworthy, among the early Christians and those who rose to the measure of so great a name, deservedly have the force of canons.

[1] This was perceived by Cassian [Cassiodorus] as shown by his *Institute of Holy Writ* [Preface].

Next after these comes the authority of those who, each in his own time, have been distinguished among Christians for their piety and learning, and have not been charged with any serious error; for what these declare with great positiveness, and as if definitely ascertained, ought to have no slight weight for the interpretation of passages in Holy Writ which seem obscure. Their authority is the greater the more there are of them in agreement, and as we approach nearer to the times of pristine purity, when neither desire for domination nor any conspiracy of interests had as yet been able to corrupt the primitive truth.

52. The Schoolmen, who succeeded these writers, often show how strong they are in natural ability. But their lot was cast in an unhappy age, which was ignorant of the liberal arts; wherefore it is less to be wondered at if among many things worthy of praise there are also some things which we should receive with indulgence. Nevertheless when the Schoolmen agree on a point of morals, it rarely happens that they are wrong, since they are especially keen in seeing what may be open to criticism in the statements of others. And yet in the very ardour of their defence of themselves against opposing views, they furnish a praiseworthy example of moderation; they contend with one another by means of arguments—not, in accordance with the practice which has lately begun to disgrace the calling of letters, with personal abuse, base offspring of a spirit lacking self-mastery.

53. Of those who profess knowledge of the Roman law there are three classes.

The first consists of those whose work appears in the Pandects, the Codes of Theodosius and Justinian, and the Imperial Constitutions called Novellae.

To the second class belong the successors of Irnerius, that is Accursius, Bartolus, and so many other names of those who long ruled the bar.

The third class comprises those who have combined the study of classical literature with that of law.

To the first class I attribute great weight. For they frequently give the very best reasons in order to establish what belongs to the law of nature, and they often furnish evidence in favour of this law and of the law of nations. Nevertheless they, no less than the others, often confuse these terms, frequently calling that the law of nations which is only the law of certain peoples, and that, too, not as established by assent, but perchance taken over through imitation of others or by pure accident. But those provisions which really belong to the law of nations they often treat, without distinction or discrimination, along with those which belong to the Roman law,

as may be seen by reference to the title *On Captives and Postliminy*. We have therefore endeavoured to distinguish these two types from each other.

54. The second class, paying no heed to the divine law or to ancient history, sought to adjust all controversies of kings and peoples by application of the laws of the Romans, with occasional use of the canons. But in the case of these men also the unfortunate condition of their times was frequently a handicap which prevented their complete understanding of those laws, though, for the rest, they were skilful enough in tracing out the nature of that which is fair and good. The result is that while they are often very successful in establishing the basis of law, they are at the same time bad interpreters of existing law. But they are to be listened to with the utmost attention when they bear witness to the existence of the usage which constitutes the law of nations in our day.

55. The masters of the third class, who confine themselves within the limits of the Roman law and deal either not at all, or only slightly, with the common law of nations, are of hardly any use in relation to our subject. They combine the subtlety of the Schoolmen with a knowledge of laws and of canons; and in fact two of them, the Spaniards Covarruvias and Vázquez, did not refrain from treating the controversies of peoples and kings, the latter with great freedom, the former with more restraint and not without precision of judgement.

[xviii] The French have tried rather to introduce history into their study of laws. Among them Bodin and Hotman have gained a great name, the former by an extensive treatise, the latter by separate questions; their statements and lines of reasoning will frequently supply us with material in searching out the truth.

56. In my work as a whole I have, above all else, aimed at three things: to make the reasons for my conclusions as evident as possible; to set forth in a definite order the matters which needed to be treated; and to distinguish clearly between things which seemed to be the same and were not.

57. I have refrained from discussing topics which belong to another subject, such as those that teach what may be advantageous in practice. For such topics have their own special field, that of politics, which Aristotle rightly treats by itself, without introducing extraneous matter into it. Bodin, on the contrary, mixed up politics with the body of law with which we are concerned. In some places nevertheless I have made mention of that which is expedient, but only in passing, and in order to distinguish it more clearly from what is lawful.

58. If any one thinks that I have had in view any controversies

of our own times, either those that have arisen or those which can be foreseen as likely to arise, he will do me an injustice. With all truthfulness I aver that, just as mathematicians treat their figures as abstracted from bodies, so in treating law I have withdrawn my mind from every particular fact.

59. As regards manner of expression, I wished not to disgust the reader, whose interests I continually had in mind, by adding prolixity of words to the multiplicity of matters needing to be treated. I have therefore followed, so far as I could, a mode of speaking at the same time concise and suitable for exposition, in order that those who deal with public affairs may have, as it were, in a single view both the kinds of controversies which are wont to arise and the principles by reference to which they may be decided. These points being known, it will be easy to adapt one's argument to the matter at issue, and expand it at one's pleasure.

60. I have now and then quoted the very words of ancient writers, where they seemed to carry weight or to have unusual charm of expression. This I have occasionally done even in the case of Greek writers, but as a rule only when the passage was brief, or such that I dared not hope that I could bring out the beauty of it in a Latin version. Nevertheless in all cases I have added a Latin translation for the convenience of those who have not learned Greek.[1]

61. I beg and adjure all those into whose hands this work shall come, that they assume towards me the same liberty which I have assumed in passing upon the opinions and writings of others. They who shall find me in error will not be more quick to advise me than I to avail myself of their advice.

And now if anything has here been said by me inconsistent with piety, with good morals, with Holy Writ, with the concord of the Christian Church, or with any aspect of truth, let it be as if unsaid.

[1] [The English translation, of course, follows Grotius' Latin version, which sometimes differs from the original Greek.]

[1]

HUGO GROTIUS

ON

THE LAW OF WAR AND PEACE

BOOK I

CHAPTER I

WHAT IS WAR? WHAT IS LAW?

I.—*Scope of the treatise*

CONTROVERSIES among those who are not held together by a common bond of municipal law are related either to times of war or to times of peace. Such controversies may arise among those who have not yet united to form a nation, and those who belong to different nations, both private persons and kings; also those who have the same body of rights that kings have, whether members of a ruling aristocracy, or free peoples.

War, however, is undertaken in order to secure peace, and there is no controversy which may not give rise to war. In undertaking to treat the law of war, therefore, it will be in order to treat such controversies, of any and every kind, as are likely to arise. War itself will finally conduct us to peace as its ultimate goal.

II.—*Definition of war, and origin of the word*

1. As we set out to treat the law of war, then, we ought to see what is war, which we are treating, and what is the law which forms the subject of our investigation.

Cicero defined war as a contending by force. A usage has [*On Duties*, I. xi. 34.] gained currency, however, which designates by the word not a contest but a condition;[1] thus war is the condition of those contending by force, viewed simply as such. This general definition includes all the classes of wars which it will hereafter be necessary to discuss. For I do not exclude private war, since in fact it is more ancient than public war and has, incontestably, the same nature as public war; wherefore both should be designated by one and the same term.

2. The origin of the word, moreover, is not inconsistent with this use. For *bellum*, 'war', comes from the old word *duellum*, as

[1] [10] Philo, *On Special Laws*, II [III. xv]: 'Not alone are they considered enemies who are actually engaged in fighting on land or sea, but those also are to be viewed as such who bring up appliances of war before harbours or walls, even if they are not yet commencing to fight.'

Servius in his comment *On the Aeneid*, Book I [Book I, line 545],

Nor mightier in war and arms than he,

remarks: '"War" (*bellum*) contains also the idea of "plan and purpose" (*consilium*); the word "arms" (*arma*) refers only to actual hostilities.' The same commentator in a note to Book VIII [line 547]: '"War" (*bellum*) extends over the whole period in which any preparation necessary for fighting is being made, or in which fighting is carried on; the word "battle" (*proelium*) is used of actual engagements.'

bonus, 'good', from an earlier *duonus*, and *bis*, 'twice', from *duis*. The word *duellum*, again, bears to *duo*, 'two', a relation in sense similar to that which we have in mind when we call peace 'union'. In like manner the Greeks derived their word for 'war' (πόλεμος) from a word meaning 'multitude'; [2] the ancients also took a word for 'faction' (λύη) from the idea of dissolution in it, just as the dissolution of the body suggested δύη, 'anguish'.

3. And usage does not reject this broader meaning of the word. If, to be sure, the term 'war' is at times limited to public war, that implies no objection to our view, since it is perfectly certain that the name of a genus is often applied in a particular way to a species, especially a species that is more prominent.

I do not include justice in my definition because this very question forms a part of our investigation, whether there can be a just war, and what kind of a war is just; and a subject which is under investigation ought to be distinguished from the object towards which the investigation is directed.

III.—*Law is considered as a rule of action, and divided into rectorial law and equatorial law*

1. In giving to our treatise the title 'The Law of War', we mean first of all, as already stated, to inquire whether any war can be just, and then, what is just in war. For law in our use of the term here means nothing else than what is just, and that, too, rather in a negative than in an affirmative sense, that being lawful which is not unjust.

Now that is unjust which is in conflict with the nature of society of beings endowed with reason. Thus Cicero declares that to take away from another in order to gain an advantage for oneself is contrary to nature; and in proof he adduces the argument that, if this should happen, human society and the common good would of necessity be destroyed. Florentinus shows that it is wrong for a man to set a snare for a fellow man, because nature has established a kind of blood-relationship among us. 'Just as all the members of the body agree with one another,' says Seneca, 'because the preservation of each conduces to the welfare of the whole, so men refrain from injuring one another because we are born for community of life. For society can exist in safety only through the mutual love and protection of the parts of which it is composed.' [1]

On Duties, III [III. v. 21].

Digest, I. i. 3.

On Anger, Book II xxxii [II. xxxi. 7].

[1] The same Seneca, *Letters*, xlviii [xlviii. 3]: 'This fellowship ought carefully and scrupulously to be cultivated; for it mingles us all with all men, and brings the conviction that there is a bond of right common to the human race.'

On this point reference may be made to Chrysostom, *On First Corinthians*, xi. 1 [Homily XXV, iii–iv.]

2. Moreover, just as there is one form of social relationship without inequality,[1] as that between brothers, or citizens, or friends, or allies; another with inequality—the 'paramount' type, in the view of Aristotle—as that between father and children, master and slave, king and subjects, God and men [2]; so there is one type of that which is lawful applying to those who live on an equality, and another type applying to him who rules and him who is ruled, in their relative positions. The latter type, if I mistake not, we shall properly call rectorial law; the former, equatorial law. [*Nicom. Ethics*, VIII. viii.]

IV.—*A body of rights in respect to quality is divided into faculties and aptitudes*

There is another meaning of law viewed as a body of rights, different from the one just defined but growing out of it, which has reference to the person. In this sense a right becomes a moral quality of a person, making it possible to have or to do something lawfully.

Such a right attaches to a person, even if sometimes it may follow a thing, as in the case of servitudes over lands, which are called real rights, in contrast with other rights purely personal; not because such rights do not also attach to a person, but because they do not attach to any other person than the one who is entitled to a certain thing.

When the moral quality is perfect we call it *facultas*, 'faculty'; when it is not perfect, *aptitudo*, 'aptitude'. To the former, in the range of natural things, 'act' corresponds; to the latter, 'potency'.

V.—*Faculties, or legal rights strictly so called, are divided into powers, property rights, and contractual rights*

A legal right (*facultas*) is called by the jurists the right to one's own (*suum*); after this we shall call it a legal right properly or strictly so called.

Under it are included power, now over oneself, which is called freedom,[3] now over others, as that of the father (*patria potestas*) and that of the master over slaves; ownership,[4] either absolute, or less than absolute, as usufruct and the right of pledge; and contractual

[1] Thus grammarians distinguish between a construction involving agreement and a construction involving subordination.

[2] On this relationship see Philo on the words 'Noah awoke' [*Genesis*, ix. 24; Philo, *On Sobriety*, x].

Plutarch has also some remarks in his *Numa* [iv = 62].

[3] The Roman jurists very properly define liberty as a 'legal right' (*facultas*).

[4] 'Right' is used to designate 'ownership' of something, according to the Scholiast on Horace [*Epist.* II. ii. 174; *Sat.* II. iii. 217].

rights, to which on the opposite side contractual obligations correspond.

VI.—*Another division of legal rights, into private and public*

Legal rights, again, are of two kinds: private, which are concerned with the interest of individuals, and public which are superior to private rights, since they are exercised by the community over its members, and the property of its members, for the sake of the common good.

Thus the power of the king has under it both the power of the father and that of the master; thus, again, for the common good the king has a right of property over the possessions of individuals greater than that of the individual owners;[1] thus [3] each citizen is under a greater pecuniary obligation to the state, for the meeting of public needs, than to a private creditor.

VII.—*What is an aptitude?*

Nicomachean Ethics, V [vi].

Aptitude is called by Aristotle ἀξία, that is, 'worthiness'.[2] Michael of Ephesus renders the idea of fairness, which according to him should come next to worthiness, as 'that which fits to' something and 'that which is fitting', that is 'that which is suitable'.

VIII.—*On expletive justice and attributive justice; that these are not properly distinguished by geometrical and arithmetical proportion, and that the latter is not concerned with public property, the former with private property*

1. Legal rights are the concern of expletive justice (*iustitia expletrix*), which is entitled to the name of justice properly or strictly so called. This is called 'contractual' justice by Aristotle, with too narrow a use of the term; for though the possessor of something

[1] Philo, *On Noah's Planting* [chap. xiii]: 'Surely silver, gold and the other treasures which are guarded by subjects, belong to those who rule rather than to those who possess them.' Pliny, *Panegyric* [xxvii. 4]: 'He, to whom belongs whatever all possess, has himself as much as all possess'; later he adds [chap. l], 'Would Caesar see anything which was not his own?' Add John of Salisbury, *Policraticus*, Book V, chap. i.

[2] Cicero, *On Duties*, I [I. xvii. 58]: 'If, however, a contrast and comparison of some sort should be made, in order to see who has the strongest moral claims upon us, first and foremost would come our country and our parents, whose services have placed us under the deepest obligation; next, our children and entire household, who look to us alone and can have no other recourse; lastly, the relatives with whom we are on good terms, who in most cases have also a common interest with us. In consequence, the support of life on the material side is due to those whom I have mentioned, above all others; but intimacy of relations in life and in living, counsel, conversation, words of encouragement and words of consolation, sometimes even reproofs, thrive best in friendship.'

See what will be said below in Book II, chap. vii, 9 and 10.

Seneca, *On Benefits*, Book IV, chap. xi, when he is treating of wills: 'We try to find those who are most worthy, in order that we may leave our property to them'; consult the passage itself.

Add Augustine, *On Christian Doctrine*, Book I, chaps. xxviii and xxix.

belonging to me may give it back to me, that does not result 'from a contract', and nevertheless the act falls within the purview of this type of justice; and so the same philosopher has more aptly termed it 'restorative' justice.

Aptitudes are the concern of attributive justice (*iustitia attributrix*). This Aristotle called 'distributive' justice. It is associated with those virtues which have as their purpose to do good to others, as generosity, compassion, and foresight in matters of government.

2. Aristotle says also that expletive justice is expressed by a simple proportion, which he calls 'arithmetical'; attributive justice, by a proportion involving comparison, which he calls 'geometrical', this having the name of a proportion only among mathematicians.[1] Such proportions are often applicable, but not always so; and in fact expletive justice differs essentially from attributive justice not in a relation expressed by such a proportion but in the matter with which it is concerned, as we have already said. Thus a partnership agreement is carried out according to a proportion based on comparison; and if only one person can be found who is fitted for a public position, the award will be made to him on the basis of a simple proportion only.

3. Not more true, again, is that which some say, that attributive justice is concerned with public property, while expletive justice is concerned with private property. On the contrary, if a man wishes to give a legacy from property belonging to him, he acts in conformity with attributive justice; and the state which pays back, from public funds, what a citizen has advanced for the public interest, is discharging the function of expletive justice.

This distinction was correctly observed by the teacher of Cyrus. For when Cyrus had given to the smaller boy a smaller tunic although it belonged to another, and on the other hand had given a larger tunic to the larger boy, his teacher thus instructed him: [Xenophon, *Training of Cyrus*, I. iii. 17.]

> That would have been a proper course to pursue in case a referee had been appointed to decide what would be suitable for each; but when the question to be settled was, to which boy the tunic belonged, then only one point was to be considered, which boy was more justly entitled to it[2]—whether the object should belong to him who had violently taken it away, or to him who had made it or purchased it.

[1] [11] This is called by Cassiodorus [*On Dialectic*, p. 408, edition of 1589], a comparison in respect to mode of being. Of this proportion, which attributive justice is wont to use, there is a not inappropriate description in Homer [*Iliad*, XIV. 382]:

> Excellent things to the excellent gave he, mean to the vulgar.

[2] See the same Xenophon, *Training of Cyrus*, Book II [II. ii. 18]. The law given through Moses has a similar bearing: 'Neither shalt thou favour a poor man in his cause'; *Exodus*, xxiii. 3; *Leviticus*, xix. 15. It is, in fact, necessary, as Philo says [*On the Judge*, iv], 'to separate the case itself entirely from consideration of the parties thereto.'

IX.—*Law is defined as a rule, and divided into the law of nature and volitional law*

1. There is a third meaning of the word law, which has the same force as statute [1] whenever this word is taken in the broadest sense as a rule of moral actions imposing obligation to what is right. We have need of an obligation; for counsels and instructions of every sort, which enjoin what is honourable indeed but do not impose an obligation, do not come under the term statute or law. Permission, again, is not, strictly speaking, an operation of law, but a negation of operation, except in so far as it obligates another not to put any hindrance in the way of him to whom permission is given. We said, moreover, 'imposing obligation to what is right', not merely to what is lawful, because law in our use of the term here stands related to the matter not only of justice, as we have set it forth, but also of other virtues.[2] Nevertheless that which, in accordance with this law, is right, in a broader sense is called just.

[*Nicom. Ethics*, V. x.] 2. The best division of law thus conceived is found in Aristotle, that is, into natural law and volitional law, to which he applies the term statutory, with a rather strict use of the word statute; sometimes he calls it established law.

The same distinction is to be found among the Jews who, when they expressed themselves with exactness called the law of nature, 'commandments',[3] and established law [4] 'statutes'. These terms the Greek-speaking Jews are accustomed to translate as 'duties' and 'commands'.

X.—*Definition of the law of nature, division, and distinction from things which are not properly so called*

1. The law of nature is a dictate of right reason,[4] which points out that an act, according as it is or is not in conformity with rational nature, has in it a quality of moral baseness or moral necessity; and

[1] With this meaning Horace said [*Satires*, I. iii. 111]:

> You must confess that laws were framed
> From fear of the unjust.

Elsewhere he says [*Art of Poetry*, 122]:

> Let him deny that laws were made for him,

where the Scholiast has the comment: 'Let him be a despiser of laws.'

[2] An example is to be found in a law of Zeleucus [Aelian, *Various History*, II. xxxvii], which imposed a penalty on a man who should have drunk wine against the order of a doctor.

[3] So Maimonides, *Guide of the Perplexed*, Book III, chap. xxvi.

[4] Philo, *That Every Virtuous Man is Free* [chap. vii]: 'Now the law that deceives not is right reason; and this law is not mortal as devised by this or that mortal, not lifeless as writ on leaves of paper or on columns that are without life, but incorruptible, since it has been imprinted by immortal nature on an immortal intelligence.'

Tertullian, *On the Soldier's Chaplet* [chap. vi]: 'You will ask then, for a law of God, and this you have, common throughout the world, written on nature's tablets.' Marcus Aurelius, Book II

that, in consequence, such an act is either forbidden or enjoined by the author of nature, God.

2. The acts in regard to which such a dictate exists are, in themselves, either obligatory or not permissible, and so it is understood that necessarily they are enjoined or forbidden by God. In this characteristic the law of nature differs not only from human law, but also from volitional divine law; for volitional divine law does not enjoin or forbid those things which in themselves and by their own nature are obligatory or not permissible, but by forbidding things it makes them unlawful, and by commanding things it makes them obligatory.

3. For the understanding of the law of nature, again, we must note that certain things are said to be according to this law not in a proper sense but—as the Schoolmen love to say—by reduction, the law of nature not being in conflict with them; just as we said above that things are called just which are free from injustice. Sometimes, also, by misuse of the term, things which reason declares are honourable, or better than their opposites, are said to be according to the law of nature, although not obligatory.

4. It is necessary to understand, further, that the law of nature deals not only with things which are outside the domain of the human will, but with many things also which result from an act of the human will. Thus ownership, such as now obtains, was introduced by the will of man; but, once introduced, the law of nature points out that it is wrong for me, against your will, to take away that which is subject to your ownership. Wherefore Paul the jurist said that theft is prohibited by the law of nature[1]; Ulpian, that it is by nature base; and Euripides declares that it is displeasing to God, in these verses of the *Helena*:

Digest, XLVII. ii. 1.
Digest, L. xvi. 42.
[903 ff.]

> For God himself hates violence; he wishes
> That not by rapine but by honest toil
> We riches gain. Let wealth be scorned that not
> By right has come. Common to men the air is,
> And also earth, on which 'tis meet that each

[II. xvi]: 'The end for beings endowed with reason is to follow the law and rule of that most ancient city and state.'

Add the passage of Cicero, *On the Commonwealth*, III, which Lactantius quotes. [*Divine Institutes*,] VI. viii. There are some excellent observations which Chrysostom makes, *On the Statues*, [Homilies] XII, XIII. And the remarks of Thomas Aquinas, *Secunda Secundae*, lvii. 2, and of Duns Scotus. [*On the Sentences*,] III, Dist. 37, are by no means to be slighted.

[1] After the law which relates to acknowledging and worshipping the Deity, says Julian [*Oration* VII, 209 C, D. Cf. translation by Wright, vol. i, pp. 85–6]: 'There is a second law which in its very nature is sacred and divine. This law bids men always and everywhere to hold aloof from the property of others, and does not grant permission for them to go contrary to it either in word or in deed or in the secret thoughts of the mind.'

Cicero, *On Duties*, Book III [III. x. 42], following Chrysippus: 'So in life it is not unfair for each to try to get for himself what contributes to his advantage; but to take what belongs to another is not right.'

His home make large, if he his hands restrain
From things of others, and from violence.

5. The law of nature, again, is unchangeable—even in the sense that it cannot be changed by God. Measureless as is the power of God, nevertheless it can be said that there are certain things over which that power does not extend; for things of which this is said are spoken only, having no sense corresponding with reality and being mutually contradictory. Just as even God, then, cannot cause that two times two should not make four, so He cannot cause that that which is intrinsically evil be not evil.

[*Nicom. Ethics*, II. vi.] This is what Aristotle means when he says: 'Some things are thought of as bad the moment they are named.' For just as the being of things, from the time that they begin to exist, and in the manner in which they exist, is not dependent on anything else, so also the properties, which of necessity characterize that being; such a property is the badness of certain acts, when judged by the standard of a nature endowed with sound reason. Thus God Himself suffers Himself to be judged according to this standard, as may be seen by referring to *Genesis*, xviii. 25; *Isaiah*, v. 3; *Ezekiel*, xviii. 25; *Jeremiah*, ii. 9; *Micah*, vi. 2; *Romans*, ii. 6, iii. 6.

6. Sometimes nevertheless it happens that in the acts in regard to which the law of nature has ordained something, an appearance of change deceives the unwary, although in fact the law of nature, being unchangeable, undergoes no change; but the thing, in regard to which the law of nature has ordained, undergoes change. For example, if a creditor gives a receipt for that which I owe him, I am no longer bound to pay him, not because the law of nature has ceased [5] to enjoin upon me that I must pay what I owe, but because that which I was owing has ceased to be owed. Thus Arrian [I. vii. 16.] in *Epictetus* reasons correctly when he says: 'To constitute an indebtedness it is not enough that a loan has been made; the obligation must remain as yet unsatisfied.' So if God should command that any one be slain, or that the property of any one be carried off, homicide or theft—words connoting moral wrong—will not become permissible; it will not be a case of homicide or theft, because the deed is done by authority of the Supreme Lord of life and property.

7. Furthermore, some things belong to the law of nature not through a simple relation but as a result of a particular combination of circumstances. Thus the use of things in common was in accordance with the law of nature so long as ownership by individuals was not introduced; and the right to use force in obtaining one's own existed before laws were promulgated.

XI.—*That the instinct common to other animals, or that peculiar to man, does not constitute another kind of law*

1. The distinction, which appears in the books of Roman law, between an unchangeable law common to animals and man, which the Roman legal writers call the law of nature in a more restricted sense, and a law peculiar to man, which they frequently call the law of nations, is of hardly any value. For, strictly speaking, only a being that applies general principles is capable of law, as Hesiod rightly observed: [*Works and Days*, 276 ff.]

> For law to man by most high Jove was given;
> The fish, the wild beasts and the winged birds
> On one another feed, for right no place
> Among them has. Justice he gave to man,[1]
> The gift most excellent.

'We do not speak of justice in the case of horses or lions,' says Cicero in the first book of his treatise *On Duties*. [I. xvi. 50.] Plutarch in his *Life of Cato the Elder* remarks: 'We have been so constituted that we avail ourselves of law and justice only in respect to men.' [v = p. 339 A.] Says Lactantius, in his fifth book: 'In all animals, which are devoid of reason, we see that there is a nature which looks out for itself. [V. xvii. 30.] For they do harm to others in order to secure advantage for themselves, since they do not know that to do harm is evil. But man, because he has a knowledge of good and evil, refrains from doing harm to another, even with disadvantage to himself.'

Polybius, having recounted the beginnings of organized society, [Book VI [VI. vi. 4].] when men had first come together, adds that if any one should have done harm to his parents[2] or benefactors, it could not possibly have happened that the rest would not be incensed at his conduct, and adds the reason: 'For since the race of men differs from the other animals in this, that it is endowed with intelligence and reason, it is quite unbelievable that an act so contrary to their nature would have been passed over by men, as by other animals, without

[1] Juvenal, *Satires*, xv [lines 143 ff.]:

> We alone have as our portion gained
> A reverential mind; we things divine
> May apprehend, we fitted are to know
> Life's arts, and practise them. [12] From heaven's height
> A heaven-born sympathy we drew, and this
> The grovelling and earth-gazing creatures lack.
> To them, when new the world, its Maker gave
> Life only, but to us a soul as well,
> That mutual kindly feeling might us prompt
> To seek and render aid, and peoples form
> From scattered dwellers.

Chrysostom, *On Romans*, vii [viii = Homily XIV, v] declares: 'Even in the case of creatures which lack reason and perception men ought not to deviate from the consideration of what is just and unjust.'

[2] An example is found in the case of Ham (*Genesis*, x [ix]. 22), where the punishment follows.

notice; such a deed must have attracted attention and have given offence.' [1]

2. If, however, a sense of justice is sometimes attributed to brute creatures,[2] that is done without proper grounds, in consequence of observing in them a shadow or trace of reason.[3] But whether an act, in regard to which the law of nature has pronounced, is common to us and other animals, as the rearing of offspring, or peculiar to us, as the worship of God, has no bearing whatever on the nature of the law.

XII.—*In what way the existence of the law of nature is proved*

1. In two ways men are wont to prove that something is according to the law of nature, from that which is antecedent and from that which is consequent. Of the two lines of proof [6] the former is more subtle, the latter more familiar.

Proof *a priori* consists in demonstrating the necessary agreement or disagreement of anything with a rational and social nature; proof *a posteriori*, in concluding, if not with absolute assurance, at least with every probability, that that is according to the law of nature which is believed to be such among all nations, or among all those that are more advanced in civilization. For an effect that is universal demands a universal cause; and the cause of such an opinion can hardly be anything else than the feeling which is called the common sense of mankind.

[*Works and Days*, 763 f.]

2. Hesiod has a saying which has been quoted by many:

> Not wholly void of truth the opinion is
> Which many peoples hold.

[Sextus Empiricus, *Against the Mathematicians*, vii. 134.]

'Those things which appear true to men generally are worthy of credence,' [4] Heraclitus used to say, judging that common acceptance

[1] Chrysostom, *On the Statues*, XIII [Homily XIII. iii]: 'We are so constituted by nature that we feel indignation along with those who have been badly treated. Whence in fact we become incensed at men who inflict wrongs, even though the wrong in no way affects us.'

The Scholiast on Horace, *Satires*, I. iii [line 97]: 'Feeling and mind experience one sort of indignation when we hear that a murder has been committed, another when we hear of a theft.'

[2] A kind of foreshadowing of justice the Elder Pliny notes in elephants, Book VIII, chap. v [*Natural History*, VIII. iv. 9].

The same author, Book X [X. lxxiv. 208], relates that there was a female asp which itself killed its own snakelet because this had caused the death of the son of the man who took care of it.

[3] Seneca, *On Anger*, Book V, chap. iii [I. iii. 4, 6], said that brutes are devoid of anger, but that they have an impulse in place of anger. 'Mute creatures', he declares, 'are without the feelings of men; but they have certain impulses similar to the impulses of men.' Thus in brutes, said Origen, *Against Celsus* [IV. xcii=p. 225], there are not faults but the appearance of faults, 'just as if a lion could get angry'. So the Peripatetics in Porphyry, *On Abstaining from Animal Food*, Book III [III. xxii=p. 309].

[4] Aristotle, *Nicomachean Ethics*, X. ii: 'What seems to all to be so, this we say is so; and he who wishes to take away this belief will himself say things in no respect more worthy of belief.' Seneca [*Letters*, XI. ii. 31=lxxxi. 31]: 'Amidst so great difference of opinions, all men with one voice, as the saying is, will declare to you that gratitude is due to those who do kindnesses.' Quintilian

is the best criterion of truth. Says Aristotle: 'The strongest proof is, if all men agree upon what we say'; Cicero, 'The agreement of all nations upon a matter ought to be considered a law of nature'; Seneca, 'The proof of truth is the fact that all hold the same view upon something'; and Quintilian, 'We consider those things certain upon which there is agreement in the common opinion of men.'

[*Eudem. Ethics*, I. vi.] *Tusculan Disputations*, I [I. xiii. 30]. [Seneca,] *Letters*, cxvii [cxvii. 6]. [*Inst. Or.*, V. x. 12.]

Not without reason did I speak of the nations 'more advanced in civilization'; for, as Porphyry rightly observes, 'Some nations have become savage and unhuman,[1] and from them it is by no means necessary that fair judges draw a conclusion unfavourable to human nature.' Andronicus of Rhodes says: 'Among men endowed with a right and sound mind there is an unchangeable law, which is called the law of nature. And if men having sick or distorted mentalities think otherwise, that has no bearing on the matter. For he who says that honey is sweet does not lie, just because to sick people it may seem otherwise.'

[*On Abstaining*, IV. xxi.] [*On Nic. Ethics*, V. x.]

Consistent with these expressions is a remark of Plutarch, in his *Life of Pompey*: 'By nature no man either is or has been a wild and unsociable animal; but man becomes brutelike when, contrary to nature, he cultivates the habit of doing wrong. By adopting different habits, however, and making a change of place and of life, he returns again to a state of gentleness.' Aristotle presents this characterization of man in the light of the qualities peculiar to him: 'Man is an animal gentle by nature.'[2]

[xxviii = p. 633 D.] *Topics*, V. ii.

[*Institutes of Oratory*, I. vi. 45]: 'The common usage of educated men I shall call custom in speech, just as in life we call the common practice of good men custom.'

Josephus, *Antiquities of the Jews*, Book XVI [XVI. vi. 8]: 'There is no nation which throughout maintains the same customs; in many instances customs differ very greatly in different towns. But the right is equally advantageous for all men, and as useful to barbarians as to Greeks. To right, at any rate, the laws of our nation pay the greatest heed, and so, if we but strictly observe them, they render us well disposed and friendly to all men. Such are the characteristics which it is fair to demand from the laws; and others ought not to think, on account of differences in institutions, that our laws, being foreign, are repugnant to them, but they ought rather to see whether these are adjusted to a standard of virtue and upright conduct. For virtue and upright conduct [13] concern all men in common, and are of themselves sufficient to safeguard the life of men.'

Tertullian, *Prescription against Heretics* [chap. xxviii]: 'That which among many is found to be one, is an offshoot not of error but of tradition.'

[1] Justin, *Dialogue with Trypho* [chap. xciii = 697 A]: 'With the exception of those who, possessed by unclean spirits, and corrupted through perverse training, bad practices and unjust laws, have lost the ideas derived from nature.' Says Philo, *That Every Virtuous Man is Free* [chap. vii]: 'Rightly then may one marvel that so dense darkness has been shed about them that they do not perceive the true characteristics of things, clear as these are.' Chrysostom, in the sermon *That Christ is God* [xi]: 'Take not thy judgement of things from those whose soul is corrupt.'

[2] The same thing is said by Chrysostom, *On the Statues*, Homily XI [XI, iv]. The thought is more fully set forth by Philo, *On the Ten Commandments* [chap. xxv]: 'Man, who was to be the most gentle of animals, nature made sociable and desirous of companionship, summoning him to live a harmonious life in society; and she gave to him speech also which would unite men by adapting their natures one to the other and leading them to a concord of feeling.' The same philosopher in his treatise *On the Indestructibility of the World* [vii = p. 495 E]: 'The gentlest of animals is man, because nature has given to him the gift of speech, by which the most unrestrained passions are soothed as by enchantment.'

Politics, I. v. In another passage he says: 'In order to find what is natural we must look among those things which according to nature are in a sound condition, not among those that are corrupt.'

XIII.—*Division of volitional law into human and divine*

We have said that another kind of law is volitional law, which has its origin in the will.

Volitional law is either human or divine.

XIV.—*Human law is divided into municipal law, law narrower in scope than municipal law, and law broader in scope than municipal law, which is the law of nations; explanation thereof, and how proved*

1. We begin with human law, because that is familiar to the greater number. Human law, then, is either municipal law, or broader in scope than municipal law, or more restricted than municipal law.

Municipal law is that which emanates from the civil power. The civil power is that which bears sway over the state. The state is a complete association of free men, joined together for the enjoyment of rights and for their common interest.

The law which is narrower in scope than municipal law, and [7] does not come from the civil power, although subject to it, is of varied character. It comprises the commands of a father, of a master, and all other commands of a similar character.

The law which is broader in scope than municipal law is the law of nations; that is the law which has received its obligatory force from the will of all nations, or of many nations.[1] I added 'of many nations' for the reason that, outside of the sphere of the law of nature, which is also frequently called the law of nations, there is hardly any law common to all nations. Not infrequently, in fact, in one part of the world there is a law of nations which is not such elsewhere, as we shall at the proper time set forth in connexion with captivity and postliminy. [Book III, vii and ix.]

2. The proof for the law of nations is similar to that for unwritten municipal law; it is found in unbroken custom and the testimony of those who are skilled in it. The law of nations, in fact, as Dio Chrysostom well observes, 'is the creation of time and custom.' [*Orations*, lxxvi = p. 648.] And for the study of it the illustrious writers of history are of the greatest value to us.

[1] Vázquez, *Controversiae*, II. liv. 4.

XV.—*Divine law is divided into universal divine law and divine law peculiar to a single people*

1. What volitional divine law is we may well understand from the meaning of the words. It is, of course, that law which has its origin in the divine will; and by this origin it is distinguished from the law of nature, which also, as we have said, may be called divine. [Prolegomena, 12.]

In the consideration of volitional divine law that is applicable which Anaxarchus [1] rather vaguely expressed, that God does not will a thing because it is lawful, but that a thing is lawful—that is obligatory—because God willed it.

2. This law, moreover, was given either to the human race, or to a single people. To the human race we find that the law was thrice given by God: immediately after the creation of man, a second time in the renewal of human kind after the Flood, lastly in the more exalted renewal through Christ.

These three bodies of divine law are beyond doubt binding upon all men, so far as they have become adequately known to men.

XVI.—*That those not of Jewish birth have never been bound by the Hebraic law*

1. Among all peoples there is one to which God vouchsafed to give laws in a special manner; that is the Jewish people, which Moses thus addresses (*Deuteronomy*, iv. 7): 'For what great nation is there, that hath a God so nigh unto them, as Jehovah our God is whensoever we call upon Him? And what great nation is there, that hath statutes and ordinances so righteous as all this law, which I set before you this day?'

Similar are the words of the psalmist (*Psalms*, cxlvii):

He showeth his word unto Jacob,
His statutes and his ordinances unto Israel.
He hath not dealt so with any nation;
As for his ordinances, they have not known them.

2. Nor should we doubt that those of the Jews are in error (among them Trypho, in his discussion with Justin) who think that even foreigners, if they wish to be saved, must pass under the yoke of the Hebraic law. An ordinance, in fact, is not binding upon those to whom it has not been given. But in the case under consideration the ordinance itself declares to whom it was given, in the words: 'Hear, O Israel,' [2] and everywhere the covenant is spoken of as made with the Jews, and they themselves are said to be chosen as

[1] The passage is in Plutarch's *Alexander* [lii = p. 695 A].
[2] Moses Maimonides held the same opinion, and supported it by *Deuteronomy*, xxxiii. 4.

the peculiar people of God. The truth of this was recognized by Maimonides, who proves it by the passage in *Deuteronomy*, xxxiii. 4.

3. Among the Jews, moreover, there always dwelt some men of foreign birth, 'devout men and that fear God,' such as the Syro-Phoenician woman (*Matthew*, xv. 22), Cornelius (*Acts*, x. 2), and [xvii. 4.] 'the devout Greeks' (*Acts*, xviii. 4). In Hebrew we find 'the pious ones of the Gentiles', as we read in the title of the Talmud concerning the King.[1] Such is he who in the law is called 'foreigner', literally 'son of strangeness' (*Leviticus*, xxii. 25); also 'stranger or sojourner' (*Leviticus*, xxv. 47), where the Chaldean has 'uncircumcised inhabitant'.[2]

These, as the Jewish teachers themselves declare, were bound to observe the laws that had been given to Adam and Noah, to abstain from idols, from blood, and from the other things which will be mentioned below in their proper place; but they were not bound to observe also the laws which were peculiar to the Israelites. And so, while the Israelites were not permitted to eat the flesh of a creature which had died a natural death, [8] nevertheless this was allowed to foreigners who were living among them (*Deuteronomy*, xiv. 21). There were exceptions only in the case of certain laws in which it was expressly stated that sojourners should be bound by them no less than natives.

4. Again, strangers who came from outside, and were not subject to Jewish institutions, were permitted to worship God in the temple at Jerusalem, and to offer sacrifices; they must stand nevertheless in a place separate and apart[3] from that where the Israelites stood (*1 Kings*, Vulgate, *3 Kings*, viii. 41; *2 Maccabees*, iii. 35; *John*, xii. 20; *Acts*, viii. 27). And Elisha did not point out to Naaman the Syrian,[4] nor Jonah to the people of Nineveh, nor Daniel

[1] Also the title *On the Sanhedrin*, chap. xi.

[2] Reference is made to such an 'uncircumcised sojourner' also in *Exodus*, xii. 45. From him the proselyte, that is the circumcised stranger, is distinguished, as shown by comparison with a passage in *Numbers*, ix. 14. Of these pious uncircumcised persons Maimonides has much to say in his book *On Idolatry*, chap. x, 6. Also in his commentary *To Misnajoth*, and frequently elsewhere, he says that those pious persons from among the Gentiles will be sharers in the blessings of time to come.

Chrysostom, *On Romans*, chap. ii [Homily V, iii, on verse 10]: 'What Jew does he mean, and of what Greeks is he discoursing? Of those who were before the coming of Christ; for his argument has not yet been brought down to the times of grace.' Then, 'By Greeks he here means not those that worshipped idols but those that feared God, that obeyed the law of nature, that strictly kept all observances which make for piety, save only the Jewish observances.' Examples he finds in Melchizedek, Job, the Ninevites, Cornelius; later he adds [Homily VI, iv, on verse 29]: 'And again he is speaking of a Greek, not as a worshipper of idols, but god-fearing, virtuous, and free from the observances of the law.' To the same effect [14] he explains the words 'to them that are without law as without law' [*On First Corinthians*, Homily XXII, iii, on verse 21]; and *On the Statues*, Homily XII [XII, v]: 'The Greek whom he names here is not devoted to idols, but a worshipper of the one God; nevertheless one who is not bound by the constraint of Jewish observances, as, for example, the keeping of the Sabbath day, circumcision, and various purifications; yet one who meanwhile manifests devotion to wisdom and piety in all things.'

[3] See Josephus, where the history of Solomon's temple is treated [Josephus, *The Jewish War*, V. v. 6; *Antiquities of the Jews*, VIII. iv. 3].

[4] Hilary expressed the same opinion, *On Matthew*, xii.

to Nebuchadnezzar, nor the other prophets to the Tyrians, the Moabites, or the Egyptians to whom they wrote, that it was necessary for them to receive the law of Moses.

5. What I have said of the law of Moses as a whole, I wish to consider as said also with reference to circumcision, which was as it were the introduction to the law. There is only this difference, that the Israelites alone were bound by the law of Moses, while the whole posterity of Abraham was held subject to the law of circumcision; in consequence, we read in the historical writings of both Jews and Greeks that the Idumaeans adopted circumcision under compulsion of the Israelites. Wherefore we may well believe that the peoples which, besides the Israelites, practised circumcision (there are several of them, mentioned by Herodotus, Strabo, Philo, Justin, Origen, Clement of Alexandria, Epiphanius, and Jerome[1]) were descended from Ishmael, or from Esau, or from the descendants of Keturah.[2]

6. For the rest, in all cases the principle stated by Paul (*Romans*, ii. 14) was applicable:

'When Gentiles that have not the law do by nature'[3] (that is in accordance with the usages that flowed from the primitive source, unless one prefers to refer 'nature' to what precedes, in order to contrast the Gentiles with the Jews, into whom from birth the law was inculcated) 'the things of the law, these, not having the law, are the law unto themselves, in that they show the work of the law written in their hearts, their conscience bearing witness therewith, and their thoughts one with another accusing or else excusing them.'

And in the same connexion (verse 26) there is another statement: 'If the uncircumcision' (that is a man who has not been circumcised) 'keep the ordinances of the law, shall not his uncircumcision be reckoned for circumcision?' With reason, therefore, in the history by Josephus, the Jew Ananias instructed Izates of Adiabene (Tacitus calls him Ezates), that even without circumcision God can be rightly worshipped and propitiated.[4] *Antiquities of the Jews*, XX [ii. 4]. [*Annals*, XII. xiv.]

In regard to the fact that many foreigners were circumcised, and through circumcision made themselves subject to the law (as

[1] Theodoret may be added.

[2] From them apparently were descended those of the Ethiopians whom Herodotus [II. civ] reckons among the circumcised. Epiphanius [*On the Twelve Stones*] calls them Homeritae.

[3] 'By the reasonings of nature,' says Chrysostom [*On Romans*, Homily V, v, on chap. ii. 14]. Afterward he adds, 'For this reason they are to be admired, because they had no need of a law'; also [ibid., on verse 16]: 'In place of the law conscience and the use of reason suffice.'

Tertullian, *An Answer to the Jews* [chap. ii] says: 'Before the law of Moses, writ upon tablets of stone, I maintain that there was an unwritten law, which was understood by nature, and was kept by the fathers.' Not far from this is the thought of Isocrates [*Areopagiticus*, xvi = 148 A]: 'Those who wish to have a good commonwealth ought not to fill their colonnades with inscribed decrees but to carry in their hearts a regard for what is just.'

[4] Trypho himself, relaxing his uncompromising attitude, speaks thus to Justin [Justin, *Dialogue with Trypho*, viii = 493 A]: 'If you had continued in that kind of philosophy, some hope of a better state would have been left to you.'

Paul explains, *Galatians*, v. 3), they did this in part that they might acquire the right of citizenship, for proselytes, whom the Jews called foreigners of righteousness, had the same rights as the Israelites (*Numbers*, xv. 15);[1] in part that they might become sharers of the promises[2] which were not common to the human race but peculiar to the Jewish people. Nevertheless I should not deny that in the following centuries a perverse opinion was embraced by some, to the effect that there was no salvation outside the pale of Judaism.

7. From this we conclude that we are bound by no part of the Hebraic law, so far as this is law of a special kind. For, outside of the law of nature, the binding force of law comes from the will of him who makes the law; and it is not possible to discover, from any indication, that God willed that others than Israelites should be bound by that law. There is, then, no need of proof that in respect to ourselves this law has been abrogated; for a law cannot be abrogated in respect to those on whom it has never been binding. But for the Israelites its binding force was abrogated in respect to rituals, at least, the moment the law of the Gospel began to be promulgated, as was clearly revealed to the chief of the Apostles (*Acts*, x. 15). It was abrogated also in regard to other things, after the Jewish people, though the fall and [9] devastation of their city, which was destroyed without hope of restoration, ceased to be a nation.

8. What we, who are not of Jewish birth, gained from the coming of Christ, was not that we should not be bound by the laws of Moses, but that, having previously had only an obscure hope resting on the goodness of God, we are now upheld by a covenant expressed in plain words. We are therefore able to unite ourselves with the Jews, sons of the Patriarchs, in one church, since their law, by which as by a barrier they were held apart from us, has been done away with (*Ephesians*, ii. 14).

XVII.—*What arguments Christians may draw from the Hebraic law, and in what way*

1. Since the law given through the agency of Moses cannot impose direct obligation upon us, as we have already shown, let us see whether it may be useful to us in any other way, not only in this inquiry regarding the law of war but in other similar inquiries. To know this is, in fact, on many accounts important.

2. First, then, the Hebraic law shows that that which is enjoined

[1] Justin, *Dialogue with Trypho* [cxxiii = 761 A]: 'The proselyte who has been circumcised and has joined himself with the people is on a plane with the native-born [Israelite].'

[2] For this reason they were admitted to a participation in the feast of the Passover [cf. *Exodus*, xii. 19, 47, 48].

by it is not contrary to the law of nature. For since the law of nature, as we have previously said, is perpetual and unchangeable, nothing contrary to that law could be enjoined by God, who is never unjust. Further, the law of Moses is called 'pure' and 'right' (*Psalms*, xix. 8; Vulgate, xviii. 8), and the Apostle Paul calls it 'holy', 'just', and 'good' (*Romans*, vii. 12).

I am speaking of the ordinances of the law; for in regard to the things which it permits a closer distinction must be made. Now permission which is accorded by a law—we are not concerned here with a permission which involves fact merely, signifying the removal of an impediment—is either complete, which authorizes the doing of something with the fullest possible liberty, or incomplete, which only grants freedom from punishment among men, with the right of non-interference by another. From permission of the former kind, not less than from a command, it follows that that with which the law deals is not contrary to the law of nature. With permission of the second sort the case is different.[1] But inference from the law of Moses to the law of nature is rarely in order, for the reason that, when the words which express the permission are equivocal, it is more fitting for us to determine by the law of nature of which kind the permission is rather than to proceed by argument from the character of the permission to the law of nature.

3. Akin to this first observation is a second, that to those who among Christians have the sovereign power it is now permitted to make laws having the same purport as the laws which were given by the agency of Moses; exception being made of those laws whose entire content belonged to the time when Christ was still expected and the Gospel was not yet revealed, and of laws in relation to which Christ ordained the contrary, either in general or in particular. Outside of these three cases no reason can be thought of why that which was ordained by the law of Moses should now be outside the range of things which are permissible.

4. A third observation should be added. All that was enjoined by the law of Moses with reference to those virtues which Christ requires of His disciples, is just as much, or even in a greater degree, to be required of Christians now.[2] The basis of this observation is to be found in the fact that the virtues required of Christians, as humility, long-suffering, and love, are required in a higher degree[3]

[1] See Chrysostom, *On Romans*, end of chap. vii [Homily XIII, iv].

[2] Tertullian, *On Modesty* [chap. vi]: 'Liberty in Christ has done no wrong to innocence. There remains in its entirety the law of piety, truth, steadfastness, chastity, justice, mercy, kindliness, modesty.'

[3] Chrysostom, *On Virginity*, xciv [lxxxiv]: 'Now a greater degree of virtue ought to be displayed . . . because the grace of the Spirit has now been abundantly shed abroad, and because the coming of Christ is a great gift.' The same father presents similar expressions in the homily, *That*

than was the case under the Hebraic law; that, too, with good reason, because the heavenly promises are set forth in the Gospel much more clearly.

Hence the old law compared with that of the Gospel is said to have been neither 'perfect' nor 'faultless' (*Hebrews*, vii. 19; viii. 7), and Christ is said to be 'the end of the law' (*Romans*, x. 4); also, the law is spoken of as a 'tutor to lead us to Christ' (*Galatians*, iii. 25). Thus the ancient law of the Sabbath and that of tithes [1] show that Christians are bound to set apart not less than a seventh of their time for divine worship, and not less than a tenth of their income for the support of those who minister in the sacred offices, or to similar pious uses.

Faults are the Result of Neglect [= *On the Devil as Tempter*, Homily III, vii]; also, *On Fasting*, III; and *On Romans*, the passages dealing with vi. 14 [Homily XI] and vii. 5 [Homily XII; see also on verse 6].

Add Irenaeus, [*Against Heresies*,] Book IV, chap. xxvi. The writer of the *Synopsis of Holy Scriptures* [xlvii] which is found in the works [15] of Athanasius, treating the fifth chapter of Matthew, says: 'Christ here renders the "precepts of the law more strict".'

[1] Thus Irenaeus [*Against Heresies*], Book IV, chap. xxxiv, makes application of this law in respect to Christians; so does Chrysostom also, *On First Corinthians*, end of the last chapter [Homily XLIII, iv to verse 9], and *On Ephesians*, ii. 10 [Homily IV, iv, on verse 10].

CHAPTER II

WHETHER IT IS EVER LAWFUL TO WAGE WAR

I.—*That war is not in conflict with the law of nature is proved by several considerations*

1. Having seen what the sources of law are, let us come to the first and most general question, which is this: whether any war is lawful, or whether it is ever permissible to war. This question, as also the others which will follow, must first be taken up from the point of view of the law of nature.

Marcus Tullius Cicero, both in the third book of his treatise *On Ends* and in other places, following Stoic writings learnedly argues that there are certain first principles of nature—'first according to nature', as the Greeks phrased it—and certain other principles which are later manifest but which are to have the preference over those first principles. He calls first principles of nature those in accordance with which every animal from the moment of its birth has regard for itself and is impelled to preserve itself, to have zealous consideration for its own condition and for those things which tend to preserve it, and also shrinks from destruction and things which appear likely to cause destruction. Hence also it happens, he says, that there is no one who, if the choice were presented to him, would not prefer to have all the parts of his body in proper order and whole rather than dwarfed or deformed; and that it is one's first duty to keep oneself in the condition which nature gave to him, then to hold to those things which are in conformity with nature and reject those things that are contrary thereto.

[III. v. 17.]

Gellius, [*Attic Nights*,] XII. v.

2. But after these things have received due consideration [Cicero continues], there follows a notion of the conformity of things with reason,[1] which is superior to the body. Now this conformity, in which moral goodness becomes the paramount object, ought to be accounted of higher import than the things to which alone instinct first directed itself, because the first principles of nature commend us to right reason, and right reason ought to be more dear to us than those things through whose instrumentality we have been brought to it.[2]

[1] Seneca, *Letters*, cxxiv [XX. vii. 11]: 'Just as in every case a nature, unless brought to its highest perfection, does not manifest its type of good, so the good of man is not found in man unless reason has been perfected in him.'

[2] Seneca, *Letters*, lxxvi [IX. v. 8]: 'That to which each creature is born, and on account of which

Since this is true and without other demonstration would easily receive the assent of all who are endowed with sound judgement, it follows that in investigating the law of nature it is necessary first to see what is consistent with those fundamental principles of nature, and then to come to that which, though of later origin, is nevertheless more worthy—that which ought not only to be grasped, if it appear, but to be sought out by every effort.

3. According to the diversity of the matter, that which we call moral goodness at times consists of a point, so to speak, so that if you depart from it even the least possible distance you turn aside in the direction of wrong-doing; at times it has a wider range, so that an act may be praiseworthy if performed, yet if it be omitted altogether or performed in some other way no blame would attach, the distinction being generally without an intermediate stage, like the transition from being to not-being. [16] Between things opposed in a different way, however, as white and black, a mean may be found either by effecting a combination of the two or by finding an intermediate between them.

It is with this latter class of actions that both divine and human laws are wont to concern themselves, in order that those acts which were in themselves merely praiseworthy might become also obligatory. But we said above, in discussing the law of nature, that the question is this, whether an act can be performed without injustice; and injustice is understood to be that which is utterly repugnant to a rational and social nature.

4. In the first principles of nature there is nothing which is opposed to war; rather, all points are in its favour. The end and aim of war being the preservation of life and limb, and the keeping or acquiring of things useful to life, war is in perfect accord with those first principles of nature. If in order to achieve these ends it is necessary to use force, no inconsistency with the first principles of nature is involved, since nature has given to each animal strength sufficient for self-defence and self-assistance. 'All kinds of animals', says Xenophon, 'understand some mode of fighting, and they have learned this from no other source than nature.' In the fragment of the *Piscation* we read:

[*Training of Cyrus*, II. iii. 9.]
[Ovid, *Halieutica*, 7–9.]

> To all has it been given
> To recognize a foe, likewise to know

it is esteemed, is the best thing in it. What is the best thing in a man? Reason.' See also *Letters*, cxxi [XX. iv] and cxxviii [apparently cxxiv, cited in the previous note, is meant].

Juvenal, *Satires*, xv [lines 106–8]:

> Zeno's rules to us
> Give better guidance; for their teaching is
> That not all things, but only certain things
> We may do to save life.

Their safeguards each its own, and power and use
Each of its weapon.

Horace had said: [*Satires*, II. i. 52 f.]

With tooth the wolf, with horn the bull attacks;
And why, unless by inner feeling guided?

Lucretius presents the thought more fully: [V. 1033 ff.]

Each creature feels the strength which it can use.
Felt by the calf his horns are, ere they stand
Upon his forehead; and with them he butts
Angrily, and, threatening, forward thrusts.[1]

The same idea is thus expressed by Galen: 'We see that each animal uses for its protection that in which it is strongest. For the calf whose horns have not yet sprouted threatens with that part, and the colt kicks before its hoofs are hard, and the puppy tries to bite when its teeth are not yet strong.' Galen also remarks (*On the Use of Parts*, I) that man is an animal born for peace and war. Weapons, to be sure, are not born with him, but he has hands suited for fashioning and handling weapons; and we see that babies of their own accord, and without being taught by any one, use their hands in place of weapons.[2] So Aristotle, too (*On the Parts of Animals*, IV. 10), says that in the case of man the hand has the place of spear, sword, and all other weapons, because he is able to take and hold everything with the hand.

5. Right reason, moreover, and the nature of society, which must be studied in the second place and are of even greater importance, do not prohibit all use of force, but only that use of force which is in conflict with society, that is which attempts to take away the rights of another. For society has in view this object, that through community of resource and effort each individual be safeguarded in the possession of what belongs to him.

[1] [37] Martial [*Epigrams*, III. lviii. 11]:

The calf with head unhorned is keen to fight.

Porphyry, *On Abstaining from Animal Food*, Book III [III. ix]: 'Each animal knows in what part it is weak, in what part strong; the former it shields, the latter it makes use of. The panther uses its teeth, the lion its claws and teeth, the horse its hoof, and the ox its horns.'

Chrysostom, *On the Statues*, XI [Homily XI, iv]: 'The animals, devoid of reason, have their weapons in the body itself; thus the ox has horns, the wild boar tusks, the lion claws. To me, on the contrary, God has not furnished weapons in the organization of my body, but outside the body, showing by this very fact that man is a gentle animal, and that I do not at all times have need of such weapons. Often, in fact, I lay my missile aside, sometimes I take it up again. Weapons, therefore, he caused to be separate and apart from my nature, in order that I might be more free and unfettered, and might not be compelled always to carry them.' The latter part of the quotation accords well with the passage of Galen quoted in the text.

[2] Cassiodorus, *On the Soul* [ix]: 'And since the body of man is able to defend itself neither with horn nor with tusk nor by means of flight' (as the other animals do), 'there were granted to him a powerful chest and arms; to the end that with the hand he might ward off attempted injury and protect himself by presenting his body—so to speak—as a kind of shield.'

It is easy to understand that this consideration would hold even if private ownership (as we now call it) had not been introduced; for life, limbs, and liberty would in that case be the possessions belonging to each, and no attack could be made upon these by another without injustice. Under such conditions the first one taking possession would have the right to use things not claimed and to consume them up to the limit of his needs, and any one depriving him of that right [17] would commit an unjust act. But now that private ownership has by law or usage assumed a definite form, the matter is much easier to understand. I shall express the thought in the words of Cicero:

On Duties, III [III. v. 22].

Just as, in case each member of the body should have a feeling of its own, so that it might think that it could gain in vigour by drawing to itself the vigour of the nearest member, the whole body would of necessity be weakened and utterly perish, so, if every one of us should seize upon the possessions of others for himself and carry off from each whatever he could, for his own gain, human society and the community of life would of necessity be absolutely destroyed. For, since nature does not oppose, it has been granted that each prefer that whatever contributes to the advantage of life be acquired for himself rather than for another; but nature does not allow us to increase our means of subsistence, our resources, and our riches, from the spoil of others.

6. It is not, then, contrary to the nature of society to look out for oneself and advance one's own interests, provided the rights of others are not infringed; and consequently the use of force which does not violate the rights of others is not unjust. This thought also Cicero has presented: 'Since there are two ways of settling a difference, the one by argument, the other by force, and since the former is characteristic of man, the latter of brutes, we should have recourse to the second only when it is not permitted to use the first.' 'What can be done', says the same writer in another passage, 'against force without force?'

[*On Duties,* I. xi. 34.]

Letters, XII. iii [XII. iii. 1].

In Ulpian we read: 'Cassius writes that it is permissible to repel force by force, and this right is bestowed by nature. From this moreover it appears, he says, that it is permissible to repel arms by means of arms.' Ovid had said:

Digest, XLIII. xvi. 1. 27.

[*Art of Love,* III. 492.]

The laws permit arms 'gainst armed men to bear.

II.—*That war is not in conflict with the law of nature is proved from history*

1. Our statement that not all war is in conflict with the law of nature is more fully proved from sacred history. For Abraham with his servants and allies had taken up arms and had won the victory over the four kings who had sacked Sodom; and God approved the deed through his priest Melchizedek. Thus in fact Melchizedek addressed him (*Genesis*, xiv. 20): 'Praise be to God Most High,

who has delivered thine enemies into thine hand.' But Abraham had taken up arms, as is evident from the narrative, without a special command of God; in accordance with the law of nature, therefore, did he act, a man not only most holy but also most wise—so recognized even by the testimony of foreigners, Berosus and Orpheus.

[Josephus, *Antiquities of the Jews*, I. vii. 2; Clement of Alexandria, *Stromata*, V. x. 124.]

I shall not appeal to the history of the seven peoples whom God delivered to the Israelites to be destroyed; for in that case there was a special command to execute a judgement of God upon peoples guilty of the greatest crimes. These wars therefore in holy writ are properly called the wars of God, since they were undertaken by the command of God, not at the discretion of men. Having a more direct bearing on our subject is the war in which the Jews, under the leadership of Moses and Joshua, by arms repelled the Amalekites who were attacking them (*Exodus*, xvii). This act, which God had not commanded in advance, He approved afterward.

2. But further, God laid down for His own people general and perpetual laws in regard to the mode of carrying on war (*Deuteronomy*, xx. 10, 15), showing by this very act that a war can be just even without having been specifically commanded by Him. For in these passages He plainly distinguishes the case of the seven peoples from that of other peoples; and since in the same passages He presents no ordinance dealing with the just causes for undertaking war, by this very fact He shows that these are clearly enough known from nature. A just cause of war, for example, is the defence of territory, in the war of Jephthah against the Ammonites (*Judges*, xi); another is the maltreatment of envoys, in the war of David against the same people (*2 Samuel*, x).

In the same connexion we should note what the inspired writer to the Hebrews says, that Gideon, Barak, Samson, Jephthah, David, Samuel, and others 'through faith subdued kingdoms, waxed valiant in fight, turned to flight the armies of the aliens' (*Hebrews*, xi. 33, 34). In this passage, as the context makes plain, he includes in the term 'faith' the conviction that [18] what is done is pleasing to God. So also a wise woman says that David 'fights the battles of God' (*1 Samuel*, xxv. 28), that is, battles that are righteous and just.

III.—*That war is not in conflict with the law of nature is proved from general agreement*

1. Our thesis is proved also by the general agreement of all nations, and especially among the wise. Well known is the passage of Cicero in regard to force used in the defence of life, in which he bears witness to nature herself:

For Milo [iv. 10].

There is this law which is not written, but born with us; which we have not learned,

have not received, have not read, but which we have caught up, have sucked in, yes have wrung out from nature herself; a law regarding which we have not been instructed, but in accord with which we have been made; to which we have not been trained, but with which we are imbued—the law that if our life has been placed in jeopardy by any snare, or violence, or weapons either of brigands or of enemies, every possible means of securing safety is morally right.[1]

[*For Milo*, xi. 30.] The same writer in another passage adds:

This law reason has enjoined upon the learned, necessity upon barbarians, custom upon nations, and nature herself upon wild beasts, that always, with whatever means of defence they possess, they ward off all violence from body, from head, from life itself.

Digest, IX. ii. 4. *Dig.*, I. i. 3. The jurist Gaius says: 'Natural reason permits defence of oneself against danger'; the jurist Florentinus, 'In accordance with this law it comes about that whatever each may have done in defence of his person he is thought to have done lawfully.' 'For there is', says Josephus, *Jewish War*, III. xxv [III. viii. 5]. 'that law of nature which applies in the case of all creatures, that they wish to live; and therein lies the reason why we consider those as enemies who clearly wish to rob us of life.'

2. So obvious is the fairness of this principle that even among brutes which, as we have said, have not the substance of legal rights but only a shadowy appearance of them, we may distinguish between the use of force which attempts an injury and that which wards it off. *Dig.* IX. i. 1. §§ 3, 11. Add *Exodus*, xxi. 28. For Ulpian, having said that an animal devoid of sense, that is, of the use of reason,[2] is incapable of doing what is legally wrong, nevertheless immediately adds that when rams or bulls have fought, and one has killed the other, on the authority of Quintus Mucius a distinction ought to be made. If the animal which started the fight should be killed, an action would not lie; but if the animal which had not started the fight should be killed, an action would lie. A passage [*Natural History*, VII. pr.] of Pliny will serve to throw light on what has been said:

The fierceness of lions does not manifest itself in attacks upon lions, the bites of serpents are not directed to serpents; but if violence is attempted there is no creature which does not manifest anger, which does not possess a spirit impatient of injury and will not show a ready liveliness in defending itself if you do it harm.

[1] Seneca [*Letters*, XX. iv. 18]: 'The surest means of defence in the case of each is nearest at hand; to each the protection of itself has been committed.' Quintilian, [*Institutes of Oratory*,] VII. ii [VII. ii. 21]: 'First, in every sort of case there must be a defence, because by nature our own safety is more important to us than the destruction of an adversary.'

Well does Sophocles say in the *Trachinian Women* [lines 278, 279]:

For openly had he himself defended,
God would have pardoned him his combat just.

See also the *Law of the Visigoths*, Book VI, title i, chap. 6 [VI. iv. 6; ed. Zeumer, p. 267].

[2] In like manner, Seneca speaks of wild beasts [*On Benefits*, I. ii. 5]: 'Far as they are from the understanding and appraisal of a benefit, yet persistent repetition of kindnesses completely masters them.' See the whole passage, *On Benefits*, Book I, chap. iii, and compare our quotation from Philo in the *Prolegomena* [note 2, p. 11].

IV.—*Proof is adduced that war is not in conflict with the law of nations*

1. It is sufficiently well established, therefore, that not all wars are at variance with the law of nature; and this may also be said to be true of the law of nations.

2. That wars, moreover, are not condemned by the volitional law of nations, histories, and the laws and customs of all peoples fully teach us. Rather, Hermogenianus said that wars were introduced by the law of nations;[1] but I think that this statement ought to be understood as having a meaning slightly different from that ordinarily given to it, namely, that a definite formality in the conduct of war was introduced by the law of nations, and that particular effects follow wars waged in accordance with such formality under the law of nations. Hence arises the distinction, which we shall have to make use of later, between a war which, according to the law of nations, is formally declared and is called legal, that is a complete war; and a war not formally declared, which nevertheless does not on that account cease to be a legal war, that is according to law. For as regards other wars, provided the cause be just, the law of nations does not indeed lend them support, but it does not oppose them, as will be explained more fully later. 'It has been established by the law of nations,' says Livy, 'that arms are to be warded off by arms.' And Florentinus declares that the law of nations authorizes us to ward off violence and injury in order to protect our body.

Dig. I. i. 5.

[Book III. iii.]

Book XLIII [XLII. xli. 11].

Dig. I. i. 3.

V.—*Proof is adduced that war was not in conflict with the divine volitional law before the time of the Gospel, and objections are answered*

1. A greater difficulty presents itself in connexion with the divine volitional law. Let no one at this point raise the objection that the law of nature is unchangeable, and that in consequence nothing can be established by God which is contrary to it. For this holds true in respect to those things which the law of nature [19] forbids or enjoins, but not in respect to the things which by the law of nature are permissible only. Things of the latter class, since they do not properly belong to the sphere of the law of nature but are outside that sphere, can be both forbidden and enjoined.

2. First, therefore, as against war some are accustomed to bring forward the law given to Noah and his posterity, in which God thus speaks (*Genesis*, ix. 5, 6):

[1] The writer of the *Lives of Famous Men* says in *Themistocles* [Nepos, *Themistocles*, vii. 4]: 'He declared that the Athenians in accordance with his advice—as they were permitted to do by the common law of nations—surrounded with walls the gods of their state, their city, and their homes, in order that they might be able the more easily to defend these against the enemy.'

And surely your blood, the blood of your lives, will I require; from every beast will I require it; and at the hand of man, even at the hand of every man's brother, will I require the life of man. Whoso sheddeth man's blood, by man shall his blood be shed: for in the image of God made He man.

The first part of this passage, then, in which the requiring of blood is mentioned, they understand as altogether general; and they suppose that the second part, about the shedding of blood in turn, is in the nature of a menace, not an expression of approval. Neither interpretation is to me convincing. For the prohibition in regard to the shedding of blood has no wider application than the commandment, 'Thou shalt not kill'; but this commandment, it is clear, has not proved to be an obstacle either to capital punishment or to wars. The latter rule of law then, as well as the former, had in view not so much the ordaining of something new as the declaration and repetition of a rule of the law of nature which had been effaced by degenerate usage. Hence these words are to be taken in a sense which conveys the idea of a moral fault, just as by the word homicide we understand not the slaying of a man in general, but a premeditated murder of an innocent man. What follows in regard to the shedding of blood in turn seems to me to contain not a statement of a bare fact, but a provision of law.

3. I explain the matter thus. According to nature it is not unfair that each suffer to the full extent of the evil he has committed, in accordance with the principle which is called the law of Radamanthus:[1]

> If each shall suffer all that he has done,
> It will be fair and right.

[*Controversies*, X. pr. 5.]

Seneca the father phrased the idea thus: 'By a most just recompense of suffering each through his own punishment undergoes what he devised for another.' In accordance with the view-point of this natural equity Cain, conscious of parricide, had said (*Genesis*, iv. 14): 'Whosoever findeth me shall slay me.'

[*Laws*, IX. viii.]

[*Orestes*, 512 ff.]

In those first times, however, either on account of the scarcity of men or because criminals were few in number and so there was less need of an example, that which seemed to be permitted by nature God repressed by a command; He desired that contact and intercourse with a murderer be avoided, but that life be not taken from him. A similar regulation Plato established among his laws; that such was the practise formerly in vogue in Greece Euripides informs us in these verses:

[1] The law of Radamanthus is stated by Apollodorus, in Book II [Apollodorus, *Library*, II. iv. 9]: 'The law of Radamanthus: if a man has avenged himself on one who first attempted to injure him, let him go unpunished.'

How well the prescient age of our forebears
Decreed, that whoso murder had committed
Should far from way and sight of men depart,
By flight, not death, his dreadful crime atone!

To the same point the following passage of Thucydides relates: ‘It is believable that in antiquity penalties were light [1] even for great crimes; but as these in the course of time came to be viewed with contempt, recourse was had to the death penalty.’ ‘Until now,’ says Lactantius, ‘it seemed in fact wicked to inflict the punishment of death upon criminals who, no matter how bad, are nevertheless men.’

Book III [xlv].

Book II [ix. 23].

4. Upon the one striking example was based a conclusion [20] in regard to the divine will, and this passed over into a law. Thus Lamech, having committed a similar crime,[2] in the light of that example promised himself exemption from punishment (*Genesis*, iv. 24).

5. But since already before the Flood, in the period of the giants, a general orgy of murders had prevailed, in the renewal of the human race after the Flood God judged that severer measures must be taken, in order that the same custom might not become fixed; and having done away with the mildness of the former age, He Himself permitted that the man who had killed a murderer [3] should be innocent—a measure which nature declared was not unfair. Afterward, when courts were established, for very weighty reasons this permission was restricted to judges alone. Nevertheless, a trace of the older custom remained in the right of the next of kin of a murdered man; this right was recognized even after the law of Moses, as will be more fully discussed later.

6. In favour of our interpretation we have the great authority of Abraham who, being not ignorant of the law given to Noah, took up arms against the four kings, obviously in the belief that his action was not in conflict with that law. In like manner also Moses ordered that the Amalekites, who were attacking the people, be resisted by force of arms; he made use, as we see, of the law of nature, for it

[1] [38] Servius, *On the Aeneid*, Book I [Book I, line 136], explains *luetis*, ‘you shall atone for’, by *persolvetis*, ‘you shall pay for’, and says: ‘The expression arose from the use of money; among the ancients all penalties were in terms of money.’ Also on Book II [Book II, line 229], explaining *expendere*, ‘to expiate’ [literally ‘to weigh out’]: ‘The word is taken from the use of money; for among our ancestors it is established that penalties were in terms of money, even when, on account of the rudeness of the age, money was still weighed out; in consequence the word was applied to the death penalty.’ On Book VI [Book VI, line 21], explaining ‘to pay’ [literally ‘to weigh’, in the phrase ‘to pay the penalty’ (*pendere poenas*)]: ‘The word was taken from condemnation to a penalty in money.’

Pliny, *Natural History*, Book VII, chap. lvi [VII. lvi. 200], relates that the first sentence of death was pronounced in the Areopagus.

[2] Or rather, if he had committed a similar crime; for this is the meaning of the words recorded by Moses [*Genesis*, iv. 24].

[3] Josephus [*Antiquities of the Jews*, I. iii. 8]: ‘I enjoin upon you that your hands be kept free from the shedding of men’s blood; and if a man shall have committed murder, let him be punished.’

does not appear that God had been specifically consulted in regard to this act (*Exodus*, xvii. 9). Furthermore, it is clear that capital punishment was already applied not only to murderers but also to other criminals, and not merely among foreign peoples but among the favoured recipients of the holy teaching (*Genesis*, xxxviii. 24).

7. Beyond doubt interpretation of the divine will, with the help of natural reason, had proceeded from like to like, so that it seemed not unfair to apply to others who were guilty of exceptional crimes the penalty which had been appointed for the murderer. For there are certain things which are rated of equal value with life, as reputation, maidenly chastity, and conjugal fidelity; and things without which life cannot be safe, such as respect for the governing power which maintains the social order. Those who attack these things seem no better than murderers.

8. In this connexion belongs the ancient tradition which is found among the Jews, that several laws were given by God to the sons of Noah, of which not all were recorded by Moses, because it was sufficient for his purpose that these were afterwards included in the particular law of the Jews. Thus it is evident that there was an old law against incestuous marriages (*Leviticus*, xviii), although this was not mentioned by Moses in the proper place. Among the ordinances which God gave to the sons of Noah they say that the following also had a place, that not only murder but also adultery, incest, and robbery with violence should be punished with death. This is confirmed by the words of Job (xxxi. 11).

9. Now the law which was given through the agency of Moses justifies the inflicting of capital punishment by reasons which carry not less weight among other peoples than with the Jewish people; examples are to be found in *Leviticus*, xviii. 24, 25, 27, 28; *Psalms*, ci. 5; and *Proverbs*, xx. 8. Of murder it is specifically said that no expiation can be made for the land except by shedding the blood of the murderer (*Numbers*, xxxv. 31, 33). Besides, it is absurd to think that on the one hand the Jewish people were allowed to protect their moral code and the safety both of the state and of individuals by means of capital punishment and to defend themselves by war, and that, on the other hand, the same course of action was not at the same time permissible to other kings and nations, while, nevertheless, those kings or nations were never warned by the prophets, as they were frequently warned in regard to other sins, that the use of capital punishment and wars of every kind were viewed with disapproval by God.

10. Who, on the contrary, would not believe that, since the law of Moses with reference to judgements embodied a faithful expression of the divine will, the nations would have acted rightly

and fittingly in taking this as a model for themselves? It is believable that at any rate the Greeks, the Attic Greeks in particular, did this; [21] thence it came about that there is so great similarity between the ancient Attic law, together with the part of the Roman law of the Twelve Tables derived from it, and the Hebraic laws. These considerations seem sufficient to make it plain that the law given to Noah did not have the meaning attributed to it by those who on the strength of it oppose all wars.

VI.—*Preliminary considerations bearing upon the question whether war is in conflict with the law of the Gospel*

1. The arguments against war which are drawn from the Gospel have greater plausibility. In examining them I shall not assume, as many do, that in the Gospel outside of the ordinances relating to belief and to the sacraments there is nothing which does not belong to the law of nature; for I do not think that this is true, at least in the sense in which most people take it.

2. I willingly recognize the fact that in the Gospel nothing is enjoined upon us which does not have the quality of natural moral goodness; but I do not see why I should grant that we are not bound by the laws of Christ beyond the limit of obligation imposed by the law of nature of and by itself. It is amazing to see how those who think differently labour in the effort to prove that things which are forbidden by the Gospel are not permissible by the law of nature, as concubinage, divorce,[1] and polygamy. These things in fact are of such a nature that reason itself declares that it is morally better to abstain from them, but they are not such that wickedness would be manifest in them without divine law. Again, who would say that we are bound by the law of nature to do that which the law of Christ enjoins, that we expose ourselves to the danger of death for others (*1 John*, iii. 16)? Pertinent is the saying of Justin: 'To live according to nature is the problem of him who has not yet become a believer.'[2]

3. I shall not even follow those who make another by no means slight assumption, that Christ, in delivering the precepts which are found in the fifth chapter of *Matthew* and immediately thereafter, was speaking only as an expounder of the law given through the agency of Moses. Of an altogether different import are the words so often repeated: 'Ye have heard that it was said to them of old time—but I say unto you.' The contrast here, as in the Syriac and other versions, shows that the meaning is, 'to them of old time,' not

[1] To this point the passage of Jerome relates [*To Oceanus, Letters*, lxxvii. 3]: 'Different are the laws of Caesar and the laws of Christ; Papinian enjoins one thing, our Paul another.'

[2] The quotation from Justin is in the letter *To Zena* [ii]; and the same thought is found in Origen, in those extracts which are known as *Philocalia* [chap. ix].

'by them of old time'; so 'to you', not 'by you'. Now 'they of old time' were none other than those who were living in the time of Moses. For the things which are declared to have been said 'to them of old time' are not utterances of men learned in the law but of Moses, either word for word, or in substance. These utterances are:

[xx. 13.] Thou shalt not kill (*Exodus*, xx. 30);

[*Lev.*, xxiv. 21.] Whoso hath killed a man shall be held in judgement (*Leviticus*, xxi. 21; *Numbers*, xxxv. 16, 17, 30);

[xx. 14.] Thou shalt not commit adultery (*Exodus*, xx. 30);

Whoso putteth away his wife, let him give to her a bill of divorcement (*Deuteronomy*, xxiv. 1);

Thou shalt not swear falsely, but thou shalt render unto the Lord that which thou hast sworn (*Exodus*, xx. 7; *Numbers*, xxx. 2);

An eye for an eye, a tooth for a tooth—supply 'it may be permitted to demand in judgement' (*Leviticus*, xxiv. 20; *Deuteronomy*, xix. 21);

Thou shalt love thy neighbour (that is, an Israelite; *Leviticus*, xix. 18), and shalt hate thine enemy (for example, the seven peoples,[1] with whom the Israelites are forbidden to have friendship and to whom they are to show no mercy; *Exodus*, xxxiv. 11; *Deuteronomy*, vii. 1. To these the Amalekites are to be added, against whom the Jews are [*Ex.*, xvii. 16.] bidden to wage implacable war; *Exodus*, xxvii. 19; *Deuteronomy*, xxv. 19).

4. For the understanding of the words of Christ, however, we must once for all observe that the law given through the agency of Moses may be considered in two ways. First, it may be viewed in relation to that which it has in common with other laws customarily established by men, in so far, surely, as it restrains the graver crimes by the fear of visible punishments (*Hebrews*, ii. 2) and by this means holds the Jewish people in a state of civil society; from this point of view it is called 'the law of a carnal commandment' (*Hebrews*, [vii. 16.] vii. 13), and law 'of works' (*Romans*, iii. 27). Or, in the second place, the Mosaic law may be viewed in relation to that which is peculiar to divine law, in so far, at any rate, as it demands purity of soul and certain actions which can be omitted without a temporal penalty; from this point of view it is called [22] 'spiritual law' (*Romans*, vii. 14), 'restoring the soul' (*Psalms*, xix. 9; Vulgate xviii. 9). The scribes and the Pharisees, contenting themselves with the first point of view, paid small heed to the second, which is more important, and did not impress it upon the people; the truth of this statement can be shown not only from our books but also from Josephus and the learned men of the Jews.

5. Even in relation to the second point of view, however, it is important to know that the virtues required of Christians were also either commended to the Jews, or enjoined upon them; but they

[1] That the hatred of these peoples was permitted by the law is remarked by the distinguished Abrabanel, in his comment *On Deuteronomy*, xxiii. 21.

were not enjoined upon the Jews with the same emphasis and with so great breadth [1] of application as upon Christians. In both respects moreover Christ sets His teachings over against those of the old time; whence it is clear that His words do not embody a mere interpretation. Recognition of this fact is important not merely with reference to the point now under consideration, but many others as well, that we may not make use of the authority of the Hebraic law to a greater extent than is just.

VII.—*Arguments drawn from Holy Writ on behalf of the negative view, that war is not in conflict with the law of the Gospel*

1. Passing by the arguments, then, which seem to us untenable, the first and weightiest evidence by which we prove that the right to war was not completely annulled by the law of Christ, shall be that passage of Paul in *I Timothy* (ii. 1–3):

> I exhort, therefore, first of all that supplications, prayers, intercessions, thanksgivings be made for all men; for kings and all that are in high place; that we may lead a tranquil and quiet life in all godliness and gravity.[2] This is good and acceptable in the sight of God our Saviour, who would have all men to be saved, and come to the knowledge of the truth.

In this passage we are taught three things: that it is acceptable to God that kings become Christians; also that, having become Christians, they remain kings (the thought was thus expressed by Justin Martyr: 'For this we pray, that kings and princes along [*Apology*,
with their royal power may possess a sound mind'; and in the book I. xvii.]
entitled *Constitutions of Clement* the Church prays for 'Christian authorities', that is, for Christian magistrates [3]); finally, that this also is acceptable to God, that Christian kings enable other Christians to lead a tranquil life.

[1] For some comments bearing upon this topic see the notes to the end of the first chapter [p. 49, note 3]. Especially fine is this passage of Chrysostom, *On Virginity*, chap. xliv:

> Formerly, so high a degree of virtue had not been demanded of us, but it was permitted to exact vengeance of him who inflicted an injury, to return abuse for abuse, and to devote oneself to amassing riches; to swear an oath free from guile, to take an eye for an eye, and to hate an enemy. Nay, more, it had not been forbidden to live luxuriously, or to give way to anger, or to cast out one wife and take another. And not even this only, but the law permitted a man to have two wives at the same time, and both in this and in other matters there was large latitude in those times. But after the coming of Christ the way of life was made much more narrow.

In the same treatise, chap. lxxxiii: 'The degree of virtue exacted from them was not the same as from us.' The same writer in the sermon *That the Son is Equal to the Father*, which is in vol. VI [*Against the Anomoeans*, Homily, X, iv], says that in the Gospel 'there is both a strengthening of the Commandments and an increase in their number'.

[2] Seneca, *Letters*, lxxiii [IX. ii], says that those who are devoted to philosophy are falsely thought to be despisers of public officials and kings. 'On the contrary', he declares [IX. ii. 1], 'none are better disposed toward them, and not without good reason; for to none do those that govern contribute more than to those to whom it is permitted to enjoy undisturbed quiet.' The letter is well worth reading, and therein is also the following [IX. ii. 5]: 'The benefits of this peace, which contributes to the advantage of all, accrue more abundantly to those who make good use of it.'

[3] [39] Unless you prefer to interpret this as 'the end of the Christian life'.

2. But how shall the ruler do this? Paul explains elsewhere (*Romans*, xiii. 4): 'For he is a minister of God to thee for good. But if thou do that which is evil, be afraid, for He beareth not the sword in vain. For he is a minister of God, an avenger for wrath to him that doeth evil.' By the right of the sword through a figure of speech every form of compulsion is understood, as also sometimes in the writings of the jurists; but in such a way, nevertheless, that the right to impose the extreme penalty, that is the actual use of the sword, is not excluded.

The second *Psalm* serves to throw not a little light upon this passage; for although it had its true application in the person of David, nevertheless it is more fully and more completely applicable to Christ, as we may learn from *Acts* (iv. 25; xiii. 33) and *Hebrews* (v. 5). This Psalm exhorts all kings to receive the Son of God with reverence; that is, that as kings they show themselves also His ministers, as St. Augustine rightly explains.

Contra Cres. Gram., III [ii. 56].

The words of Augustine on this point I quote: 'In this way kings serve God in the capacity of kings if, just as is divinely enjoined upon them, in their kingdoms they ordain good and prohibit evil, not only in respect to matters which relate to human society but also matters that concern the divine religion.' In another passage he says: 'In what way, then, do kings serve the Lord in fear, except by prohibiting and punishing with religious severity the things that are done contrary to the commandments of the Lord? For it is one thing to serve the Lord as man, another to serve Him as king.' 'Kings', he says, a little further on, 'serve the Lord in the capacity of kings when in serving Him they do those things which they cannot do except as kings.'

Letters, I [clxxxv. 19], *To Boniface.*

3. A second argument is furnished to us by that very passage [23] of which we have quoted a portion (*Romans*, xiii), wherein the highest power, such as that of the king, is said to be from God, and is called an ordinance of God. From this follows the inference that obedience should be rendered to it, and respect paid to it—that, too, whole-heartedly—and that he who resists it is resisting God.

If by the word 'ordinance' a thing should be understood which God merely does not will to prevent, as the attitude of God is with reference to wicked actions, there would follow no obligation to pay respect or to render obedience, least of all, whole-heartedly; and the Apostle in proclaiming and in magnifying this power so earnestly would be saying nothing which would not be appropriate to acts of brigandage and thievery. It follows, therefore, that this power is understood to have been ordained by the approval of the will of God; hence the inference, since God does not will that which is

contrary to Himself, that this power is not in conflict with the will of God revealed through the Gospel and binding upon all men.

4. The force of this argument, furthermore, is not weakened by the objection that those who were in authority at the time when Paul wrote were strangers to the Christian faith. For, in the first place, the statement is not unreservedly true, since Sergius Paulus, propraetor of Cyprus, had long before professed Christ (*Acts*, xiii. 12); not to speak of the ancient tradition in regard to the king of Edessa,[1] which to some extent may be tinged with falsehood, yet seems to have had its origin in truth. Then, again, the question is not whether the individuals were unrighteous but whether the function exercised by them was in itself unrighteous. That it was not, we maintain, was declared by the Apostle when, speaking even of his own time, he said that this function was ordained of God, and therefore should be honoured even in the inmost feelings of the soul, which in a proper sense are subject to God alone. Consequently both Nero, and King Agrippa, whom Paul so earnestly urges to embrace the Christian religion (*Acts*, xxvi), could have subjected themselves to Christ and have retained in the latter case a royal, in the former an imperial power, the maintenance of which without the right of the sword and of arms is inconceivable. Just as the sacrifices in the olden time were sacred according to the law even though offered by wicked priests, so sovereign power is a righteous thing even though it is held by a wicked man.[2]

5. A third argument is drawn from the words of John the Baptist. When he was earnestly asked by Jewish soldiers (from Josephus and other writers it is perfectly clear that many thousands of this race were in the military service of the Romans) what they must do to escape the wrath of God, he did not bid them withdraw from military service, as he must have done if such was the will of God, but to abstain from extortions and deceit, and to be content with their wages (*Luke*, iii. 14).

In regard to these words of the Baptist, which clearly enough imply an approval of military service, many make answer that what the Baptist enjoined differs so greatly from the precepts of Christ that it was quite possible for the Baptist to teach one thing, and Christ another. The validity of this objection I cannot admit. The gist of the doctrine which John and Christ brought to men they set forth with the same introductory plea: 'Repent, for the kingdom of heaven is at hand' (*Matthew*, iii. 2; iv. 17). Christ himself said

[1] Edessa is in Osrhoene. The name of Abgar is frequent in those regions. It appears on coins, in Tacitus and Appian; in Dio Cassius, not only the writings first published but also in the later excerpts, and in Capitolinus.

[2] This point is well developed by Chrysostom in his comment on this subject, *On Romans* [xiii. 3–4 = Homily XXIII, ii].

that the kingdom of heaven (that is, the new law, for the Jews have the custom of calling the law by the name of the kingdom) commenced to be taken by violence from the days of the Baptist (*Matthew*, xi. 12). It is said that John preached the baptism of repentance for the remission of sins (*Mark*, i. 4); the Apostles did the same, it is said, in the name of Christ (*Acts*, ii. 38). John demands fruits worthy of repentance, and threatens destruction to those who do not bring forth such fruits (*Matthew*, iii. 8 and 10). He demands works of love beyond [24] the law (*Luke*, iii 11). It is said that the law lasted until John, that is, that a more perfect doctrine began with him (*Matthew*, xi. 13). And the beginning of the Gospel is traced to John (*Mark*, i. 1; *Luke*, i. 77). John himself by this title is reckoned greater than the prophets (*Matthew*, xi. 9; *Luke*, vii. 26), since he was sent to give a knowledge of salvation to the people (*Luke*,
[i. 77.] ii. 77), to announce the Gospel (*Luke*, iii. 18).

Nowhere, in fact, does John distinguish Jesus from himself by the difference in their teachings, although the things which were taught by John in a more general and vague way, as rudiments, were clearly set forth by Christ, the true Light. The difference which John recognized between them lay rather in this, that Jesus was the promised Messiah (*Acts*, xix. 4; *John*, i. 29), the king of the Heavenly Kingdom, who would give the power of the Holy Spirit to them that believe on him (*Matthew*, iii. 11; *Mark*, i. 8; *Luke*, iii. 16).

6. The fourth argument, which seems to me to have no slight weight, is this. If the right to inflict capital punishment and to defend citizens by arms against brigands and robbers should be taken away, there would follow a riot of crimes and a deluge, so to speak, of evils, since even now, with regularly constituted courts in operation, the force of evil is with difficulty restrained.[1] Wherefore if it had been the purpose of Christ to bring about such a state of affairs as had never been heard of, beyond doubt with the most direct and explicit words he would have laid down the rules that no one should pass a sentence of death, and that no one should bear arms. We nowhere read that he did this; for the statements which are brought forward to that effect are either exceedingly general, or obscure. But fairness itself and common sense teach not only that general statements should be limited, and ambiguous expressions favourably interpreted, but even that in a degree there may be a departure from the strict signification and ordinary use of words, in order to avoid an interpretation which would involve extremely grave consequences.

[1] Chrysostom in his homily *To the Believing Father* [x]: 'For the restraint of criminals do courts exist, and laws, and punishments, and so many kinds of penalties.'

7. Fifth, by no argument can it be shown that the law of Moses relating to judgements ceased to be in force before the city of Jerusalem was destroyed, and with it alike the form of the Jewish state and the hope of its re-establishment. For neither in the law of Moses is any term set for this law, nor do Christ or the Apostles ever speak of the abolition of it, except in so far as this may seem to be included in the destruction of the state, as we have said. On the contrary Paul says that the high priest was appointed in order that he might render judgement according to the law of Moses (*Acts*, xxiv. 3). Christ himself in words introductory to his teachings [xxiii. 3.] says that he came not to destroy the law but to fulfil (*Matthew*, v. 17).

What bearing this has on the part of the law relating to rituals is not obscure; for shadowy outlines are filled out when the perfect form of the thing is shown. But in what way can this be true of the laws relating to judgements, if Christ, as some think, by his coming did away with them? If, however, the obligation of the law remained so long as the Jewish state continued to exist, it follows that Jews, even when converted to Christianity, if they were summoned before a magistrate could not escape service, and that they were bound to judge not otherwise than as Moses had commanded.

8. Weighing all the arguments deliberately I do not find even the most trivial consideration which could have influenced any upright man, who heard those words of Christ as they were spoken, to form a different opinion. I recognize the fact that before the time of Christ some things were permitted, as a matter of external freedom from punishment or even of purity of mind—we have neither need nor leisure to deal with those details more fully here—which Christ did not permit to those who followed his doctrine; as, for example, [25] to put away a wife for any sort of offence whatsoever, and to exact vengeance in court from him who had inflicted an injury. But while between the teachings of Christ and those permissions there is indeed a difference, there is no conflict. For the man who keeps his wife, or who renounces his right as an individual to exact vengeance, does nothing contrary to the law; he does in fact what the law above all desires. Far different, on the other hand, is the case of the judge whom the law does not permit, but commands, to punish the murderer with death; if he fails in this duty, he will himself become guilty before God. If Christ forbids the judge to punish the murderer with death, he enjoins what is absolutely contrary to the law, he destroys the law.

9. The sixth argument shall be drawn from the example of Cornelius, the Centurion. He received the Holy Spirit, an infallible sign of justification, from Christ, and was baptized a Christian by

the Apostle Peter; nevertheless we do not read that he gave up his military service, or was advised by Peter that he was obliged to give it up.

Some may answer that, when Cornelius received instruction from Peter in the Christian religion we must suppose that he was at the same time instructed in regard to the abandonment of military life. These would have an argument if it were certain and beyond cavil that any prohibition of military service is to be found among the teachings of Christ. Such a prohibition in plain words nowhere appears; but surely in case Christ wished to lay down a rule opposed to current usage, it was necessary that something be said on the subject, at any rate in this connexion, where it was specially required, in order that the age to come might not be ignorant of the rules controlling its duty. And it is not the practice of Luke, when the quality of persons required some particular change in manner of life, to pass this by without mention, as may be seen in the nineteenth chapter of *Acts* (verse 19) and elsewhere.

10. The seventh argument, similar to the preceding, is taken from the case of Sergius Paulus, of whom we have already made mention. For in the record of his conversion there is no indication that he gave up his office, or was instructed to give it up. What is not mentioned when, as we have said, it would be of the utmost importance that mention be made, ought to be considered as not having happened.

11. The eighth argument is that Paul the Apostle, understanding that there was a plot [1] of the Jews against him, desired that this be reported to the tribune; and when the tribune had given him soldiers, under whose protection on his journey he would be safe against all violence, he raised no objection. He did not admonish the tribune, or the soldiers, that the repelling of force by force was not pleasing to God. And yet this was the Paul who himself never let slip any opportunity to point out one's duty, or wished that such opportunity be let slip by others (*2 Timothy*, iv. 2).

12. The ninth argument lies in this, that the proper end of a thing that is honourable and obligatory cannot be otherwise than honourable and obligatory. The payment of taxes is honourable—it is even an ordinance binding conscience, as the Apostle Paul

[1] The passage relating to Paul is cited as authority by the Council of Africa [chap. xciii]: 'Against the fury of these we are able to utilize the means of protection which are customary and not inconsistent with Scripture, since the Apostle Paul, as is known to the faithful from the *Acts of the Apostles*, also foiled a plot of zealots with the help of the military.'

The same passage is often referred to by Augustine, as in *Letters*, l [clxxxv. 28], *To Boniface*; in *Letters*, cliv [xlvii. 5], *To Publicola*, in which this appears: 'And if the wicked men had fallen upon the arms of the soldiers, in the shedding of their blood Paul would not have regarded himself as guilty of crime'; also in *Letters*, clxiv [lxxxvii. 8, *To Emeritus*]: 'Paul arranged to have an escort even of armed men given to him.'

explains; but the purpose of taxation is to provide the public administration with funds upon which it may draw in order to protect good men and check evil-doers (*Romans*, xiii. 3, 4, 6). Quite to the point Tacitus remarks: 'The peace of the nations cannot be had without arms, nor arms without pay, nor pay without taxes.' Similar is the observation of Augustine: 'We pay taxes in order that pay may be provided for the soldiery, for the necessaries of life.'

Histories, IV [lxxiv].

Against Faustus, XXII. lxxiv.

13. The tenth argument is furnished by the passage in *Acts* (xxv. 11) in which Paul thus speaks: 'If I have wronged any one, and have committed anything worthy of death, I refuse not to die.'[1] Paul held the view, as I infer from this statement, that even after the publishing abroad of the law of the Gospel, there were certain crimes for which justice permitted, or even demanded, punishment by death. This is also the teaching of Peter (*1 Peter*, ii. 19, 20). If at that time it had been the will of God that capital punishment be abstained from, Paul might, to be sure, have cleared himself, but it was his duty not to leave in men's minds the belief that it was [26] then not less permissible than previously to punish criminals with death.

Now when it is once proved that the inflicting of capital punishment could be lawfully retained after the coming of Christ, it is, I think, proved at the same time that in some cases war is lawfully waged, as, for example, against criminals gathered in a great number and armed, who must be conquered in battle in order that they may be brought to trial. For while the strength of criminals and their boldness in resistance may be taken into account in prudent deliberation, the force of the law is not thereby diminished.

14. The eleventh[2] argument is based on the fact that the law of Christ did away with the law of Moses only in respect to the separation of the Gentiles from the Jews (*Ephesians*, ii. 14). But it by no means did away with the things which are honourable by nature and by the common agreement of the more civilized Gentiles; rather it included them in the general teaching of all that is honourable and virtuous (*Philippians*, iv. 8; *1 Corinthians*, xi. 13, 14). Now in

[1] So also *Acts*, xxviii. 18: 'because there was no cause of death in me.' Justin, in his *Second Apology* [I. xvi], says: 'Moreover we desire that those who do not live in consistency with those teachings, and are Christians only in name, receive punishment, and at your hands.'

[2] [In the editions of 1625, 1631, and 1632 this is the twelfth argument, and the eleventh runs as follows:

> The eleventh argument is that in the prophecy of the Apocalypse certain wars of the righteous are foretold, with manifest approval (*Rev.* xviii. 6 and elsewhere).

This paragraph is omitted in the editions of 1642 and 1646, probably because struck out by the author. Yet the omission may have been due originally to haplography in composition, on account of the relative positions of the words *Undecimum* and *Duodecimum* in a page of the edition of 1631 or 1632 used as printer's copy.]

truth the punishment of crimes, and the use of arms which prevent wrongdoing, are by nature considered praiseworthy and are referred to the virtues of justice and beneficence.

Here in passing it is worth while to note an error on the part of those who maintain that the right of the Israelites to wage war came merely from the fact that God had given them the land of Canaan. This is, to be sure, a just cause, but not the only one. For before those times under the guidance of reason, righteous men carried on wars; and afterwards the Israelites themselves waged wars on account of other causes, as David did, because of the affront offered to his envoys. For the possessions which each has by human law are not less his than if God had given them to him; this right, moreover, is not taken away by the Gospel.

VIII.—*Answering of the arguments from Holy Writ on behalf of the affirmative view, that war is in conflict with the law of the Gospel*

1. Let us now see by what considerations the contrary opinion is supported, in order that the serious-minded appraiser may be able the more easily to decide which of the two views has the weight of argument in its favour.

First of all it is customary to bring forward the prophecy of Isaiah,[1] who says that it will come to pass that the people will beat their swords into mattocks and their spears into pruning-hooks; 'and nation shall not lift up sword against nation, neither shall they learn war any more' (*Isaiah*, ii. 4). But this prophecy, as many others, may be taken in a conditional sense. With such an interpretation undoubtedly we are to understand that such will be the state of affairs if all peoples receive and fulfil the law of Christ;[2] to this end God will not suffer that there be any lack of assistance on His part. It is moreover certain that if all men were Christians, and were

[1] This prophecy is interpreted by Chrysostom with reference to the peace which came to the world through the beneficent agency of the Roman Empire; in his homily *That Christ is God* [vi] he says:

> It was foretold, in fact, not only that this religion would be steadfast, immovable, and unshaken, but that with it peace would come to the world, that in the different states the rule of aristocracies, yes even of kings, would cease, and that there would be one rule over all men: of that empire the greater part would enjoy peace, a condition opposite to that which previously existed. Formerly, in fact, even craftsmen and orators put on arms and stood in line of battle. But after the coming of Christ that custom fell into disuse and the practices of war were restricted to a limited class of individuals.

Precisely the same thought you find in Eusebius's *Preparation*, Book I, chap. x [I. iv. 5].

[2] For of the Christians Justin says [*First Apology*, xxxix], 'We do not fight against enemies.' This is like what Philo says about the Essenes, in his treatise *That Every Virtuous Man is Free* [chap. xii]: 'Among them you would find no maker of javelins or arrows, of sword or helmet or coat of mail or shield, no one to fashion either arms or engines of war.'

Similar is the comment of Chrysostom, *On First Corinthians*, xiii. 3 [Homily XXXII, v]: 'If there were among men such love as there ought to be, there would be no capital punishments.'

living the Christian life, there would be no wars. This thought Arnobius expresses as follows:

[*Against the Heathen*, I. ...]

> If all who consider themselves men, on the ground not of bodily shape but of the possession of reason, would be willing for a little while to lend ear to His wholesome and pacific dictates, and would not, swollen with pride and arrogance, entrust themselves to the guidance of their passions rather than of His admonitions, the whole world, having long ago turned its iron to milder uses, would be living in the most delightful tranquillity, and through mutual confidence in inviolable treaties would be united in a beneficent concord.

Lactantius speaks on this wise:

[*Divine Institutes*, I. xviii. 16.]

> What will happen if all men shall agree to live in perfect accord? This surely can happen, if men would only cast aside their destructive and impious fury and be willing to be innocent and just.

Or, again, the prophecy can be understood literally. If it is interpreted in this way, the facts show that it has not yet been fulfilled, but that the fulfilment of it, like the general conversion of the Jews, is to be expected. But in whichever way you interpret the prophecy, no inference can be drawn from it against the justice of wars, so long as there are men who do not suffer those that love peace to enjoy peace, but do violence to them.

2. Several arguments are ordinarily taken from the fifth chapter of *Matthew*. In order to form a proper judgement in regard to them it is necessary to recall what we said a little before, that if it had been Christ's purpose absolutely to do away with capital punishment and the right to carry on war, he would have expressed this purpose with words as plain and explicit as possible, on account of the importance of the ruling, [27] and its newness. All the more would he have been led to do this for the reason that no Jew could think otherwise than that the laws of Moses relating to judicial proceedings and public administration must retain their validity in respect to all Jews so long as their state endured. With this general observation in mind, let us discuss the bearing of the several passages in order.

3. The contrary view, then, in the second place fortifies itself with these words: 'Ye have heard that it hath been said, an eye for an eye and a tooth for a tooth; but I say unto you, Resist not him that is evil' (in Hebrew, 'the wicked man,' which the Greeks translate 'him that doeth a wrong',[1] *Exodus*, ii. 13); 'but whosoever shall smite thee on thy right cheek, turn to him the other also.' From this some infer that no injury ought to be warded off, or made the subject of a demand for requital, whether as a public or as a private matter. And yet, that is not the meaning of the words. Christ is here addressing not the magistrates, but those who are

[*Matthew*, v. 38.]

[1] [40] As also Luke, in the address of Stephen [*Acts*, vii. 27]: 'He that did his neighbour wrong.'

assailed; and he is not treating of injuries in general, but of a specific sort of injury, such as a slap on the cheek; for the latter part of the statement restricts the generality of the earlier part.

[*Matthew*, v. 41.]

4. Similarly in the precept which follows, 'And if any man would go to law with thee, and take away thy coat, let him have thy cloak also',[1] not every appeal to a judge or arbitrator is forbidden. Such at any rate is the interpretation of Paul, who does not prohibit all lawsuits (*1 Corinthians*, vi. 4), but does forbid Christians to sue one another in pagan court-rooms. In this he follows the example of the Jews, among whom the maxim was current that 'He who refers matters of the Israelites to strangers dishonours the name of God'. Now Christ, in order to train us in forbearance, wishes us not to go to law about things easy to replace, as a coat, or a cloak in addition to the coat if need be; but though our legal rights be absolutely perfect, he wishes us to abstain from enforcing them.

Philostratus, II. xv [*Life of Apollonius*, II. xxxix].

Dig. IV. vii. 4. 1.

Apollonius of Tyana used to say that it was unworthy of a philosopher 'to engage in a lawsuit about a small sum of money'. 'The praetor', says Ulpian, 'does not disapprove the act of him who considered it worth the while to deprive himself of property that he might not have to engage too frequently in lawsuits in regard to it. This attitude of restraint, on the part of a man who has an aversion to lawsuits, is not to be criticized.' What Ulpian here mentions as approved by good men, Christ enjoins, selecting the matter of his teachings from the most honourable and universally approved examples.

I. xlv [II. xlv].

From this, however, you would not rightly infer that it would be wrong even for a parent or guardian in case of necessity to defend before a judge that which involved the means of subsistence of children or of wards. For a coat and a cloak are one thing; entire means of subsistence is quite another. In the *Constitutions* of Clement it is said of the Christian, if he has a lawsuit, 'Let him try to settle it, even if thereby he be compelled to suffer some loss.' Here also that is applicable which is customarily said of things moral, that they do not consist in a point, but have a certain latitude.

[*Matthew*, v. 41.]

5. In like manner, in what follows, 'And whosoever shall

[1] The idea is thus expressed by Cyprian, *On Patience* [chap. xvi], 'That you are not to try to get back what belongs to you after it has been taken from you.' Irenaeus, Book IV, chap. xxvii [*Against Heresies*, IV. xiii. 3]: '"To him that taketh away thy coat, give thy cloak also"; but let us not grieve, as those unwilling to be defrauded, but let us rejoice as those who have given willingly. "And if anyone," He says, "shall compel thee to go a mile, go with him twain," in order that thou mayst not follow like a slave, but as a free man go before him.'

Even Libanius, who had read the Gospels, in his oration *On the Custody of Men under Accusation*, praises those who do not go to law about a coat or a cloak. Jerome, *Against Pelagius*, Dialogue I [I. xxix]: 'The Gospel teaches that to him who wishes to contend with us through judicial procedure, and by means of lawsuits and altercations wrest a coat from us, a cloak also should be given.'

compel thee to go one mile, go with him two,' our Lord did not speak of a hundred miles, a journey which would take a man too far from his business, but of one mile, and, if need be, of two, involving an amount of walking which would seem like nothing at all. The meaning, therefore, is that in matters which are not likely to inconvenience us very much we ought not to insist upon our rights, but to give up even more than is demanded, in order that our patience and kindness may become manifest to all.[1]

6. There follow the words: 'Give to him that asketh thee,[2] and from him that would borrow of thee turn not thou away.' [*Matthew*, v. 42.] If you should put this into practice without limitation, nothing could be more harsh. He who does not take care of those of his own house 'is worse than an unbeliever', says Paul (*1 Timothy*, v. 8). Let us then follow the same Paul, a most excellent interpreter of the law laid down by the Master. In urging the Corinthians [28] to exercise a spirit of liberality toward those that were in Jerusalem he says: 'Not that others may be eased and ye distressed, but that by equalization your abundance may be a supply for their want'[3] (*2 Corinthians*, viii. 13); that is—adopting the words of Livy in respect to a not [VI. xv. 9.] dissimilar case—that from the superabundance of your resources you minister to the necessities of others. The same point of view appears also in Xenophon's *Cyrus*: 'Whatever I see that I have beyond my [*Training of Cyrus*, VIII. ii. 22.] needs I use to supply the wants of my friends.' A similar principle of equalization we may apply to the interpretation of the precept which we have just quoted.

7. Just as the Hebraic law favoured freedom of divorce in order that it might mitigate the harsh treatment of wives by their husbands, so also in order to restrain private vengeance, to which that nation was specially prone, it had conferred upon an injured person the right to exact retaliation from the wrongdoer, not, however, by his own hand, but before the judge. This rule the law of the Twelve Tables also followed: 'If a man breaks a limb of another, let there be like injury in turn.' But Christ, who enjoined

[1] Justin, in his *Second Apology* [I. xvi]: 'What He said has this in view, that toward all men we are to be patient, ready to render service, and altogether devoid of anger.'

[2] Justin, in the same *Apology* [I. xv]: 'With reference to the duty of sharing what we have with the needy, and that we might not do anything in order to gain glory thereby, He said this, "To everyone that asketh give," etc.' In another passage [I. xiv]: 'sharing what we have with everyone in need.'

Cyprian, *Testimonies*, Book III, chap. i: 'Alms are to be denied to none.' Also, in the same passage: 'Give to everyone that asketh thee, and from him who would borrow from thee, turn not away.'

[3] Seneca, *On Benefits*, Book II [II. xv. 1]: 'I shall give to the needy, but in such a way that I myself may not be in want.'

Chrysostom, in his note to the verse of Corinthians quoted [*On Second Corinthians*, viii. 12 = Homily XVII, i]: 'God demands according to a man's power, "according as he hath, not according as he hath not."' That this may be rightly understood, the following is added [to verse 13]: 'He praises, indeed, those' (that is among the Thessalonians) 'who had done beyond their power, but he does not force these' (the Achaeans are meant) 'to do the same thing.'

a greater degree of forbearance, so far from expressing approval of the demanding of vengeance by a man who is already the victim of an injury, wishes that some injuries be not even warded off, either by violence or by judicial procedure. But what sort of injuries? Such, we see, as are bearable—not that such action is not also praiseworthy in the case of more dreadful injuries,[1] but that Christ is satisfied with forbearance of a more restricted scope. So he took for illustration a slap on the cheek; this does not endanger life, or mutilate the person, but merely indicates a kind of contempt for us, which makes us not a whit the worse. Seneca, in his treatise *On the* [v. 1.] *Steadfastness of the Wise Man*, distinguishes injury from insult:

'The former', Seneca says, 'is in its nature more serious; the latter is of less import, and serious only for the thin-skinned, who are not hurt by it, only offended. So great is the feebleness and emptiness of men's minds that some think nothing more bitter. Thus you may find a slave who would rather be cut with a scourge [x. 1.] than have his ears boxed.' In another passage the same philosopher remarks: 'Insult is a lesser injury, which we can complain of rather than take into court. The laws have not thought it worthy of penalty.'

[Nonius, *De Diff. Verb.*] In Pacuvius a character says: 'Easily I suffer wrong if it is free from insult.' And in Caecilius another remarks:

[Ibid.]

> Misery I can endure if only free from injury;
> And injury as well, except when insult adds indignity.

[*Against Meidias*, xxi. 72.] Demosthenes has a similar thought: 'For freemen it is not so dreadful a thing to be scourged, dreadful though that is, as it is to be lashed with insult.' The same Seneca, of whom I have spoken, a little farther [x. 2.] on says that the pain arising from insult is a mental disturbance produced by a sense of humiliation as the mind contracts on account of a deed or word reflecting dishonour.

8. Under such conditions, then, Christ enjoins forbearance. And that no one may urge as an objection that hackneyed maxim, [Publilius Syrus, *Sent.*, 645.] 'By enduring a long-standing wrong you invite a new one,' he adds that it is better to suffer even a second injury[2] than to repel the first, because, of course, we receive no harm from it except that which exists in foolish imagining.[3] 'To turn the cheek to another' in Hebrew idiom means 'to suffer patiently', as is clear from *Isaiah* [l. 6.] (xxx. 6) and *Jeremiah* (iii. 3); the phrase 'to expose one's face to [III. xxxi.] insults'[4] Tacitus used in the third book of his *Histories*.

[1] See Chrysostom, in the passage already quoted.

[2] Chrysostom, *On Romans*, chap. vii [Homily XII, ix]: 'This is a glorious victory, to give to the offender more than he wishes, and by generous exercise of one's own patience even to pass beyond the bounds of his wicked desires.'

[3] Chrysostom, *On the Statues*, Homily I [Homily II, viii]: 'An insult is felt or comes to naught, not by the intention of him who offers it but by the disposition of those who bear it.'

[4] 'To present one's face' is found with the same meaning in the *Adelphi* of Terence [215=II. ii. 7].

9. The third argument is wont to be taken from the passage which follows in *Matthew*: 'Ye have heard that it was said, Thou v. 43. shalt love thy neighbour and hate thine enemy; but I say unto you, love your enemies, bless them that curse you, pray for them that despitefully use you and persecute you.' For there are men who think that with such love and well-doing toward enemies and them that despitefully use us, both capital punishment and wars are irreconcilable.

The argument, however, is easily refuted if [29] we take into consideration the precise provision of the Hebraic law. It was enjoined upon the Jews to love their neighbour, that is a Jew;[1] that the word 'neighbour' is to be taken in this sense is evident from a comparison of the seventeenth verse of the nineteenth chapter of *Leviticus*, with the eighteenth verse of the same chapter. But magistrates were none the less commanded to put to death murderers and others guilty of heinous crimes; the eleven tribes none the less attacked the tribe of Benjamin in a just war on account of a monstrous crime (*Judges*, xxi); none the less did David, who [xx.] 'fought the battles of the Lord', undertake to wrest from Ishbosheth by arms, and rightly, the kingdom which had been promised to him.

10. Let us concede, then, a broader signification of the word 'neighbour', to include all men—for all men have now been received into a common dispensation, there are no peoples doomed by God to destruction—nevertheless that will be permitted with respect to all men which was then permitted with respect to the Israelites; they were bidden to love one another, just as now all men are. And if you wish to believe also that a greater degree of love is commanded in the law of the Gospel, let this too be granted, provided also the fact is recognized that love is not due to all in the same degree,[2] but that a greater love is due to a father than to a stranger. In like manner also, in accordance with the law of a well-ordered love, the good of an innocent person should receive consideration before the good of one who is guilty, and the public good before that of the individual.

Now it is in the love of innocent men that both capital punishment and just wars have their origin. Reference may be made to the moral sentiment expressed in *Proverbs* (xxiv. 11). The teachings

[1] The proselyte was on a level with the Jew; and the laws in regard to not harming one another were extended also to the uncircumcized inhabitants who were discussed in chap. I above, § 16. So the Talmudists.

[2] Tertullian, *Against Marcion*, [41] IV [IV. xvi]: 'The second step in charity is toward strangers; the first step is toward one's neighbours.' Jerome, *Against Pelagius*, Dialogue I [I. xxx]: 'It has been enjoined upon me, to love my enemies and to pray for them that persecute me. It is not just, is it, to love them as I love my neighbours, and my kindred, so that there would be no distinction between a rival and an intimate associate?'

of Christ in regard to loving and helping men ought, therefore, to be carried into effect unless a greater and more just love stand in the way. Familiar is the old saying: 'It is as much a cruelty to spare all as to spare none.'[1]

11. There is the further consideration that we are bidden to love our enemies by the example of God, who 'maketh his sun to rise upon the unjust'. But the same God inflicts punishments upon some wicked men even in this life, and will inflict most severe punishments hereafter. The same argument meets also the difficulty presented by the injunctions laid upon Christians in regard to mercy, which are usually brought to bear upon this point. For God is called gracious, merciful, and long-suffering (*Jonah*, iv. 2; *Exodus*, xxxiv. 6). But the sacred writings in various places describe His wrath against them that set themselves against Him,[2] that is, His will to punish them (*Numbers*, xiv. 18; *Romans*, ii. 8). And of this anger the magistrate has been appointed minister (*Romans*, xiii. 4). Moses is commended for his extraordinary mercifulness; yet he inflicted punishments on the guilty, even capital punishments. The mercy and long-suffering of Christ we are everywhere bidden to imitate; yet it is Christ who inflicts the severest punishments upon the disobedient Jews[3] (*Matthew*, xxii. 7), and will condemn the wicked according to their deserts in the Day of Judgement. The mercifulness of the Master was imitated by the Apostles, who nevertheless used the power, which had been given them by God,[4] for the punishment of wrongdoers (*1 Corinthians*, iv. 21 and v. 5; *1 Timothy*, i. 20).

12. A fourth passage presented in opposition is in *Romans* (xii. 17):

'Render to no man evil for evil. Take thought for things honourable in the sight of all men. If it be possible, as much as in you lieth, live in peace with all men. Avenge not yourselves,[5]

[1] The words are those of Seneca, *On Clemency*, Book I. chap. ii. Chrysostom, *On First Corinthians*, iii. 12 ff., treating of human punishments [Homily IX, ii]: 'And men do such things not in cruelty but in kindness.' Augustine [*Letters*, cliii. 17, *To Macedonius*]: 'Just as sometimes there is a mercy that inflicts punishment, so there is also a cruelty that spares.'

The emperors Valentinian, Theodosius, and Arcadius, in the third law *On the defenders of cities*, in the *Theodosian Code* [*Cod. Theod.*, I. xxix. 3]: 'Let there be done away with all forms of protection which, by favouring the guilty and affording aid to criminals, have hastened the increase of crimes.'

Totilas in Procopius, *Gothic War*, II [III. viii]: 'To do wrong, and to prevent the punishment of those who do wrong, I consider as on the same plane.' See also what is said in Book II, xxi. 2.

[2] On this point see Cyril, *Against Julian*, Book V.

[3] Add the references: *Matthew*, xxi. 44; *Luke*, xix. 12, 14, 27.

Chrysostom, *On Romans*, chap. xiv [Homily XXV, v, on verse 13], having described the evils that fell upon the inhabitants of Jerusalem, exclaims: 'That it was Christ who did these things, hear him declaring, now by means of parables, now clearly and explicitly.' He uses similar expressions in his second oration *Against the Jews*.

[4] Chrysostom, *On First Corinthians*, iv. 21 [Homily XIV, ii, on verse 21]: 'Shall I kill, shall I maim? . . . For as there is a spirit of gentleness, so also there is a spirit of severity.'

See also Augustine, *On the Sermon of Our Lord on the Mount*, Book I, and others cited by Gratian, *Decretum*, II. xxiii. 8.

[5] The Vulgate has in this place *defendentes*, 'defending'. This expression is often taken by the

beloved, but give place unto the wrath of God, for it is written, Vengeance belongeth unto me, I will recompense, saith the Lord. But if thine enemy hunger, feed him; if he thirst, give him to drink; for in so doing thou shalt heap coals of fire on his head. Be not overcome of evil but overcome evil with good.'

Here also the same answer may be made as in the case of the preceding passage. For at the very time when it was said by God, 'Vengeance is mine, I will repay,' both the penalty of capital punishment was being imposed and laws had been written for the conduct of wars. Moreover it is ordered that kindness be shown to enemies, belonging, of course, to the same nation (*Exodus*, xxiii. 4, 5); but this nevertheless, as we have said, put no [30] obstacle in the way either of capital punishment or of lawful wars, even against the Israelites themselves. Wherefore not even now ought the same words, or similar teachings, even though given a broader application, to be violently forced into such a meaning.

Such an interpretation is the less tenable for the reason that the chapter divisions of the Biblical writings were not made by the Apostles, nor in their time, but much later, in order to break up the text and make the citation of passages easier. Hence it has come about that the words at the beginning of chapter xii, 'Let every soul be in subjection to the higher powers,' and those that follow, are to be taken with the teachings which forbid the exacting of vengeance.

13. Now in this part of his exposition Paul says that the public authorities are the ministers of God and His avengers for wrath against evil-doers, that is, for the punishment of evil-doers. In this way with perfect clearness he distinguishes between vengeance

Christian writers, however, to express the idea of vengeance. Tertullian, *On Patience* [chap. x]: 'If now you defend yourself too feebly, you will be mad; if too vigorously, you will have to take the consequences. What have I to do with vengeance, the measure of which I have not the power to regulate, on account of my inability to endure pain?'

The same writer, *Against Marcion*, II [II. xviii]: 'Now herein there is no suggestion of permission for the inflicting of mutual injury; but there is kept in view the complete restraining of violence. To a people exceedingly obdurate and lacking faith in God, it might seem irksome, or even beyond credence, to expect from God that vengeance (*defensam*) which was afterward to be declared by the prophet: "Vengeance (*defensam*) is mine, and I will repay (*defendam*), saith the Lord." In the meantime the committing of wrong was to be checked by the fear of immediate retaliation, and the permission to exact retribution was to be the prevention of provocation, to the end that cunningly devised wickedness thus might come to an end, while through permission of the second, it might be terrified by the first; and through being deterred by the first, the second might not be committed. And thereby also in other respects the fear of retaliation is more easily aroused, by reason of the savour of suffering in it; nothing is more bitter than yourself to suffer what you have inflicted upon others.'

Tertullian, again, *On Monogamy* [chap. iv]: 'The flood was provoked by other iniquities, always avenged (*defensae*), whatsoever they were, nevertheless not "seventy times seven", the vengeance that double marriages deserve.'

The passage of Paul treated in the text is explained not infelicitously by Augustine, *Letters*, cliv [xlvii. 5]: 'Moreover it has been said, "we are not to resist evil" to this end, that vengeance, which feeds the soul with another's misfortune, may not give us pleasure.'

See what is said below, II. xx. 5 and 10.

in the public interest, which is inflicted by a public authority acting in place of God, and which is to be traced back to the vengeance reserved for God; and revenge, which has as its purpose to satisfy resentment, and which he had forbidden just a little before. For if you maintain that in the prohibition of revenge is included also the vengeance which is exacted in the public interest, what would be more absurd than to add, after saying that capital punishment must be refrained from, that public authorities have been established by God, in order that they may inflict punishments in place of God?

14. A fifth passage, which some make use of, is in *2 Corinthians* (x. 3): 'For though we walk in the flesh, we do not war according to the flesh; for the weapons of our warfare are not of the flesh,[1] but mighty before God to the casting down of strongholds,' and what follows.

This has no bearing on the point under discussion. For the passages which precede and follow show that by the term 'flesh' in that connexion Paul understood a weak condition of his body, of a sort that attracted attention and brought him into contempt. To this Paul opposed his own weapons, that is, the power given to him as an Apostle to restrain the refractory, such as he made use of against Elymas, against the Corinthian guilty of incest, Hymenaeus, and Alexander. This power, then, he says, is not of the flesh, that is, weak; on the contrary he declares that it is most mighty. What has this to do with the right to inflict capital punishment, or to wage war? Nothing whatever. Because the Church at that time was without the backing of public authorities, for its protection God had called forth that supernatural power; that power, again, began to fail at about the time when Christian emperors came to the support of the Church, just as the manna failed when the Jewish people reached fertile lands.

15. In the sixth place *Ephesians* (vi. 12) is quoted: 'Wherefore put ye on the whole armour of God, that we may be able to stand against the wiles of the Devil; for your wrestling is not against flesh and blood' (supply 'only', as in Hebrew idiom), 'but against principalities,' and what follows. This has reference to the warfare which Christians are obliged to wage as Christians, not the warfare which under certain conditions they may be able to wage in common with other men.

16. In the seventh place a passage of *James* (iv. 1) is brought forward:

> Whence come wars and whence come fightings among you?

[1] Chrysostom on this passage [*On Second Corinthians*, x. 4=Homily XXI, ii], by 'weapons of the flesh' understands [42] 'wealth, glory, power, eloquence, craftiness, canvassing for votes, flatteries, hypocrisies'.

Come they not hence, even of your pleasures that war in your members? Ye lust, and have not; ye envy and covet, and cannot obtain; ye fight and wage war, and receive not, because ye ask not; ye ask, and receive not, because ye ask amiss, that ye may spend it in your own pleasures.

This passage contains nothing of universal application. It says only that the wars and fightings in which at that time the Jews, scattered, were wretchedly contending among themselves (a history of a part of these strifes may be found in Josephus) had their origin in causes that were not righteous; that such a condition exists even at the present time we know, and we grieve that it is so. *Antiquities of the Jews*, XVIII. xii [XVIII. ix] and XIX.

A couplet of Tibullus contains an implication not unlike that of the passage of *James*: [I. x. 7 f.]

> [31] Curse of rich gold this is; and wars were not
> When beechen cups beside men's victuals stood.

In Strabo you may find in several places the comment that peoples whose food is the simplest live in greatest innocency.[1] Not far from this point of view are the lines of Lucan: [IV. 373 ff.]

> O lavish luxury,
> Never with modest outlay satisfied;
> Vainglorious craving for those viands rare
> Which quest on land and in the sea procures,
> And glamour of the sumptuous board: learn ye
> Upon how little life can be sustained,
> How little nature craves. Not high-born wine,
> Put up so long the Consul is forgot,
> Restores the sick; from gold and crystal cups
> They drink not, but with water pure their life
> Comes back. Enough for men the stream and grain
> Of Ceres. Oh wretched men, whom wars engage!

To this may be added the statement of Plutarch in the *Contradictions of the Stoics*: 'There is no war among men which does not [= p. 1049 D.]

[1] The same thing is said by Philo, *On the Contemplative Life* [chap. ii], where he quotes from Homer this line [*Iliad*, xiii. 6]:

> Of men who live on milk, and needy are,
> A race which is most just.

Justin, in regard to the Scythians [*Histories*, II. ii. 7]: 'They do not try to get gold and silver, as other mortals do.' A little later he adds [II. ii. 10]: 'This restraint of character has also imparted justice to them, since they desire nothing that belongs to another. Certainly where there is use of riches, there is also the eager desire for them.'

Gregoras, Book II [II. iv], has a passage of similar import about the Scythians, which is worth reading.

Taxiles said to Alexander [Plutarch, *Alexander*, lix. = 698 A]: 'What need is there, Alexander, of war and fighting between us, if you have come hither with the purpose of taking away from us neither water nor necessary food? For these are the only things for which men possessed of reason are obliged to fight.'

Pertinent in this connexion is the saying of Diogenes [Porphyry, *On Abstaining from Animal Food*, I. xlvii]: 'Neither thieves nor makers of wars, in fact, rise up from among those whose food is barley.'

Porphyry, in his second book *On Abstaining from Animal Food* [II. xiii]: 'Whatever is easy to make ready, and is of small cost, tends to perpetual piety, and that too among all men.'

originate in a fault. One is kindled by an eager desire for pleasures, another by avarice, another by an overmastering passion for public office or supreme power.'[1] Justin, having praised the institutions of the Scythians, says: 'If only other mortals would exercise a like self-restraint, and have the same respect for the property of others! Surely in that case so many wars would not be following one after the other through all the ages in all the world, and steel and weapons would not be carrying off more men than the term of fate as fixed by nature.' In Cicero we read, in the first book *On Ends*: 'Out of passionate desires arise hatreds, disagreements, dissensions, strifes, and wars.' Says Maximus of Tyre: 'Now all places are full of wars. For everywhere passionate desires are rife and throughout all lands they arouse covetousness for the things which belong to others.' 'The body', says Iamblichus, 'and the passionate desires of the body cause wars, fightings, and dissensions. For wars have their origin in the effort to obtain possession of things that are useful.'

[II. ii. 11–13.]

[I. xiii. 44.]

[xxix. 6.]

[*Protrepticon*, xiii.]

[1] This thought is absolutely true, but men seldom reflect upon it, though it has been set forth in many admirable statements by the ancients. What harm, then, to fortify it by the sayings of others, which are not less effective?

Athenaeus, the philosopher, in Diogenes Laertius [X. xii]:

> For evil things you toil, O wretched men!
> A lust of gain insatiate drives you on
> To strifes and wars.

Fabianus Papirius, in the *Controversies* of Seneca the father [II. ix]:

> Look you—armies in battle formation, often made up of fellow-citizens and kindred, have taken their positions ready to fight, and the hills are filled with horsemen on both sides; forthwith all the country round is strewn with the bodies of the slain, with a multitude of corpses of the fallen, or a multitude of despoilers.
>
> Suppose that some one shall raise the question, what cause forced man against man into wickedness? For the wild beasts do not wage wars on one another; and if they did, the same actions would not be fitting for man, a creature of peaceful disposition and very near the divine. What so great anger carries you on, being, as you are, one stock and blood? Or what furies have goaded you to mutual bloodshed? What so great evil has been inflicted upon the human race, either by chance or by fate? Was the slaughter of men worth while that banquets might be copiously furnished with cups, and ceilings glitter with gold? Great and praiseworthy should be the inducements which should lead men at such cost to prefer to gaze upon their own table and decorated panels rather than to look upon the light of day in innocence. Was it necessary to try to enslave the world in order that nothing might be denied to the stomach and to lust? Why, pray, are curse-bringing riches in such ways to be sought, if not even for this purpose, to leave them to one's children?

Philo, *On the Ten Commandments* [chap. xxviii]: [43] 'Is the love of money, or of women, or of glory, or, in fine, of any thing else that gives pleasure, the cause of merely slight and ordinary evils? By reason of this love, kindred are estranged from kindred, natural affection being changed into incurable hate; large and populous countries, furthermore, are laid waste by strifes between fellow-citizens; then, again, both land and sea are filled with disasters constantly recurring through engagements of infantry and naval forces. For those wars of the Greeks and the barbarians, whether among themselves or of Greeks against barbarians, even though sung and resung in tragedies, have all flowed from one fountain of passionate desire, whether of riches or glory or pleasure.'

Pliny, *Natural History*, Book II, chap. iii [II. lxiii. 154]: 'Yet we make such use of the too gentle earth that all the products of her bounty lead to crimes, to slaughter and to war; and we drench her with our blood, we cover her with unburied bones.'

Jerome, *Against Jovinianus*, II [II. xi]: 'Diogenes affirms that tyrants and destroyers of cities, and wars whether against foreign enemies or between fellow-citizens, have their origin not in the requirements of simple living on vegetables and fruits, but in a passionate desire for choice meats and feastings.'

Chrysostom, *On First Corinthians*, xiii. 3 [Homily XXXII. v]: 'For if all men loved one another,

17. There remains what was said to Peter: 'He that smiteth with the sword shall perish by the sword.' This relates, however, not to war in general, but specifically to private war; for Christ in not allowing a defence of himself to be made, or in neglecting to defend himself, presents as the reason that his kingdom is not of this world (*John*, xviii. 36). This will be more appropriately treated in another connexion. [I. iii. 3. 7.]

IX.—*The agreement of the early Christians in regard to the subject under discussion is examined*

1. Whenever question is raised in regard to the interpretation of a writing, great weight is commonly attributed both to subsequent usage and to the authority of wise men. This point of view ought to be maintained also in the interpretation of Holy Writ. For it is not probable that the churches which had been founded by the Apostles either suddenly, or in all cases, fell away from those teachings which, though written down in concise form, the Apostles had more fully explained by word of mouth or had even introduced into practice. Now those who oppose wars are wont to bring forward several sayings of the early Christians in regard to which I have three things to say.

2. In the first place, any inference based upon these sayings represents nothing more than the private opinion of certain individuals, not the opinion of the churches publicly expressed. Further, the authors of the sayings referred to are for the most part men who like to follow a road different from that of others and to set forth a teaching on some point in rather a lofty strain. Such are Origen and Tertullian; and these writers are, in fact, not self-consistent. For Origen says that bees were given by God [32] as an example to show 'how wars, if ever there should arise a necessity for them, should be waged in a just and orderly manner among men'; and the same Tertullian, who else- [*Against Celsus*, IV. lxxxii.]

no man would injure another; far from us would be murders, and strifes, and wars, and seditions, and lootings, and frauds, and all other evils.' The same preacher in his sermon *To the Believing Father* [ix], speaking of the rich, says: 'Through these come there not seditions, and wars, and strifes, and the destruction of cities, and kidnapping, and slavery, and captivities, and murder, and innumerable evils of life?'

Claudian [*Against Rufinus*, I. 217–19]:

> If this were known to men, we should enjoy
> The simple life. The trumpet-calls to strife
> No more would sound, no more the whistling dart
> Would fly; wind would not shatter ships
> Nor battering-ram the walls.

Agathias, *Histories*, Book I [I. i]: 'Because the souls of men of their free choice slip into greed of gain and injustice, they fill all places with wars and tumults.'

These fine sayings I shall conclude with one from Polybius [Dionysius of Halicarnassus, V. xi], quoted by Suidas, *Lexicon*, under Αὐτάρκεια]: 'A soul that is satisfied with what is necessary needs no other teacher in order to become wise.'

[*De Spectaculis*, xix.] where seems to be less in favour of capital punishment, said: 'No one denies that it is a good thing when the guilty are punished.'[1]

In regard to military service Tertullian hesitates. For in his [xix.] book *On Idolatry* he says: 'The question is raised whether the faithful can turn to military service, and whether the military can be admitted to the faith'; and in this connexion he seems inclined to a view adverse to military service. But in the book *On the Soldier's* [xi.] *Chaplet*, having presented some considerations adverse to military service, he immediately distinguishes those who were enrolled in military service before baptism from those who enlisted after they were baptized. 'Evidently', he says, 'the condition of those whom the faith finds already engaged in military service is altogether different, as was the condition of those whom John admitted to baptism, also that of the very faithful centurions, of whom one was commended by Christ, the other instructed by Peter. Nevertheless, having received the faith and having been confirmed in it,[2] either they must at once abandon the profession of arms, as many have done, or they must resort to cleverness in every possible way (that is, they must "take every precaution") that no offence be committed against God.' He recognized the fact, therefore, that the latter class remained in military service after baptism; but this they would by no means have done if they had understood that military service had been forbidden by Christ—no more than the soothsayers, the magicians, and other practisers of forbidden arts[3] were permitted to remain in the practice of [i.] their art after baptism. In the same book, praising a certain soldier, and that too a Christian, he says, 'Oh soldier, glorious before God!'

3. My second observation is that Christians have often disapproved or avoided military service on account of the condition of the times, which hardly permitted them to engage in such service without committing certain acts in conflict with Christian law. In [*Antiquities*, XIV. x. 12.] the letters of Dolabella to the Ephesians, which are found in Josephus, we see that the Jews demanded exemption from service on military expeditions, for the reason that, mingled with foreigners, they would

[1] The same Tertullian, *On the Soul* [chap. xxxiii]: 'Who would not prefer the justice of the world, which, as even the Apostle testifies, "beareth not the sword in vain," which partakes of the nature of religion when it resorts to severity in the defence of human life?' Also *To Scapula* [chap. iv], Scapula being a proconsul: 'We who do not fear are not trying to frighten you. But I would that we might be able to save all men by warning them not to fight against God! You may both discharge the duties of your office, and remember the claims of humanity, even because you also are under the sword.'

[2] The distinction which he here makes in respect to warfare he elsewhere applies to marriage, both in the treatise *On Monogamy*, and in the *Exhortation to Chastity*.

[3] Tertullian, *On Idolatry* [v]: 'They who practise the arts that the discipline of God has not accepted, are not admitted into the church.'

Augustine, *On Faith and Works* [xviii. 33]: 'Courtesans and actors, and all others whose activities involve public disgrace, [44] are not permitted to approach the sacraments of Christ unless they have cast off or broken such bonds.' For an example in the case of an actor, see Cyprian, *Letters*, lxv [lxi]; for cases of gladiatorial trainers, procurers, and purveyors of victims, see Tertullian [*On Idolatry*, chap. xi]; the case of a charioteer of the circus is to be found in Augustine [Migne, XLIII. 786 f.].

not be able properly to keep up the rites of their law, and because they would be forced to carry arms and make long marches on the Sabbath day. Josephus further informs us that for the same reasons Jews requested and obtained exemption from Lucius Lentulus. Elsewhere he relates that when the Jews were bidden to leave the city of Rome some were enrolled in military service, others were punished because they would not serve on account of respect for the laws of their forefathers, that is, for the reasons which we have mentioned.

[*Antiquities*, XIV. x. 13]

[XVIII. iii. 5.]

Sometimes there was also a third reason, that they thought they would have to fight against those of their own people; but from their point of view 'to take up arms against those of their own people was a crime', especially at a time when men of their own people were risking their lives in order to keep the law of their forefathers. Whenever the Jews were able to safeguard themselves against these disadvantages, they would engage in military service even under foreign kings, but 'continuing in the practices of their forefathers [1] and living in accordance with their statutes'; and this they were accustomed to stipulate in advance, as we know on the authority of Josephus.

[Josephus, *Life*, vi.]

Very similar to these hazards are those which Tertullian urges against the military service of his day. In the book *On Idolatry* he says: 'Incompatible are the oath of allegiance to God and that to man, the standard of Christ and the standard of the Devil'; the reason is that soldiers were bidden to take oath in the name of the gods of the nations, as Jupiter, Mars, and other divinities. But in the book *On the Soldier's Chaplet* he writes: 'Shall he keep guard in front of temples whose worship he has abjured, and sup in a place not acceptable to the Apostle, and defend by night those whom in the daytime he has put to flight by means of exorcisms?' A little further on he adds: 'How many other things can be descried among the offences arising from the activities of the camp, which must be regarded as transgressions?'

[xix.]

[xi.]

4. In the third place we note that the Christians of the earliest time were fired by so great zeal to attain to the most excellent things that [33] they often interpreted divine counsels as commands. 'The Christians', says Athenagoras, 'do not avail themselves of judicial procedure against those who seize their property.' Salvianus asserts that we are enjoined by Christ to abandon things which are the subject of a lawsuit, provided only we get rid of litigation. And yet that principle, thus broadly stated, is a matter of counsel, and a concern of the higher life; [2] it was not laid down as a command.

[*Apology for the Christians*, i.]

[*On the Government of God*, III. vi. 22.]

[1] The words are those of Josephus, *Antiquities of the Jews*, XI [XI. viii. 5].

[2] Fourth Council of Carthage [canon xix]: 'A bishop is not to engage in litigation on behalf of temporal interests, even when attacked.' Add Ambrose, *On Duties*, Book II. xxi, and Gregory the Great, Book II, Ind. xi, Epist. lviii.

The case is similar in respect to the taking of an oath, which most of the early Christians disapprove without making any exception, although Paul used an oath, on an important occasion. The Christian in Tatian says: 'I refuse the office of praetor'; in Tertullian we read, 'The Christian does not aspire to the aedileship.' In like manner Lactantius declares that the just man, such as he wishes the Christian to be, will not engage in war; but at the same time and in the same way he declares that the just man will not travel on the sea. How many of the early writers try to dissuade Christians from second marriages? All the things recommended are praiseworthy, excellent, and in a high degree pleasing to God; but they are not exacted of us by the required observance of any law.

[*Orations against the Greeks*, xvi.] [*Apology* xlvi.] [*Divine Institutes*] V. xviii [V. xvii. 12.]

These observations, then, will be adequate to meet the objections which are urged.

5. In order to establish our case, first, on our side there is no lack of writers, and very early writers, too, who hold the opinion that both capital punishment and war, the legitimacy of which depends on the justification of capital punishment, may be lawfully resorted to by Christians. For Clement of Alexandria says that the Christian, if he is summoned to power, as Moses was, will be for his subjects a living law, and that he will reward the good, inflict punishment on the bad. And elsewhere, describing the dress of the Christian, he says that it is seemly for a man to go barefoot, unless perchance he be in military service. In the *Constitutions*[1] which bear the name of Clement of Rome we read (Book VII, chap. iii): 'Not as though all putting to death were unlawful, but only that of an innocent person; nevertheless, even when justifiable, this has been reserved for magistrates alone.'

[*Stromata*, I. xxvi, xxvii.]

[*Paedagogus*, II. xi. 116.]

6. But let us leave the expressions of opinion by individuals and come to the authoritative public practice of the church, which ought to be of very great weight. I say, then, that men engaged in military service have never been refused baptism, or excommunicated from the Church; nevertheless such action ought to have been taken, and would have been taken, if military service had been irreconcilable with the provisions of the New Covenant.

In the *Constitutions* just quoted (Book VIII, chap. xxxii), the writer treats of those who in the olden days were from time to time admitted to baptism, or excluded from it: 'Let the soldier who asks for baptism be taught to abstain from unjust acts and false accusations, and to be content with his wages. If he obey these instructions, let him be admitted.' Tertullian in his *Apology*, speaking

Chap. xlii.

[1] This book seems to have been written at the end of the second century.

in the name of the Christians, says: 'We sail with you and we engage in military service with you.' A little before he had said: 'We are Chap.
not of you, and we have filled all places belonging to you, your cities, xxxvii.
islands, fortified posts, towns, places of assembly, even your camps.' In the same book he had related that in answer to the prayers of Chap. v.]
Christian soldiers a rainstorm was sent to the Emperor Marcus Aurelius.[1] In the *Chaplet* he says that the soldier who had cast i.]
away his chaplet manifested a more steadfast courage than his brethren, and shows that the man had many fellow soldiers who were Christians.

7. Furthermore, there were some soldiers who, having suffered tortures and death for Christ, received from the Church the same honour as the other martyrs. Among them are mentioned three companions of Paul;[2] Cerialis under Decius, and Marinus under Valerian; fifty soldier martyrs under Aurelian; Victor, Maurus, and Valentine, a chief of soldiers, under Maximian, and about the same time Marcellus the centurion; and Severianus, under Licinius. In regard to Laurentinus and Ignatius, [34] natives of Africa, Cyprian writes: [*Letters* xxxiv. 3.]

They once served as soldiers in the warfare of this world, but afterward as true and spiritual soldiers of God they routed the Devil by confessing Christ, and through martyrdom won the palms and glorious crowns bestowed by the Lord.

From all this it is clear what opinion the body of Christians held in regard to military service, even before there were Christian emperors.

8. It ought not to seem strange if in those times Christians did not willingly take part in criminal proceedings, since very frequently judgement was to be passed upon Christians themselves. There is the further consideration that in respect to other matters also the Roman laws were harsher than accorded with Christian lenity; this is evident enough from a single instance, the senatusconsultum Silanianum.[3] But after Constantine began to view the Christian religion with approval and advance its interests, the infliction of capital punishment did not on that account cease. Constantine himself, in fact, among other laws promulgated a law in regard to sewing up parricides in a leather bag, and this law is extant in the Code, in the title *Concerning those who have killed* [*Code*, IX.
Parents or Children; although, for the rest, in inflicting punishments xvii. 1.]
Constantine was exceedingly mild, so that he is criticized by not a few

[1] See also Xiphilinus in regard to this incident [Dio Cassius, *Roman History*, LXXI. viii].

[2] Add a certain soldier baptized by Cornelius, of whom Ado makes mention.

[3] The harshness of this decree [*Digest*, XXIX. v. 1, §§ 7, 21] was mitigated by Hadrian the Emperor, as we read in Spartianus [*Hadrian*, xviii]. To the harsh laws of the Romans may be added those which forbade the admission of the testimony of a slave except under torture [*Code of Justinian*, VI. i. 4].

historical writers because of his excessive leniency.[1] Also he had in his army a great many Christians, as history teaches us, and he inscribed the name of Christ upon his banner. In consequence the military oath also was changed into the form which is found in

[II. v.] Vegetius: 'By God and Christ and the Holy Spirit, and by the Majesty of the Emperor, which, next after God, ought to be for mankind the object of love and respect.'

9. And at that time among so many bishops, of whom a number had passed through the most cruel sufferings for their religion, we do not read that there was a single one who by arousing fear of the wrath of God sought to deter either Constantine from inflicting the death penalty and engaging in war, or Christians from military service; this, too, in face of the fact that a great many of the bishops were very alert guardians of discipline, and not at all disposed to hold back any suggestion regarding the duty either of the emperors or of other persons. Such a bishop, in the time of Theodosius, was Ambrose, who in his seventh discourse speaks as follows: 'To serve as a soldier is not an offence, but to serve as a soldier in order to obtain booty is a sin'; and in his work *On Duties* he says, 'Bravery, which by means of war defends one's native land from barbarians, or at home protects the weak, or safeguards one's associates from brigands, is complete justice.' This argument seems to me to be of so great force that I do not need to add anything to it.

[= Augustine, *Sermones*, Appendix, lxxxii.]

I. xxvii [128].

10. Nevertheless I am not unmindful of the fact that frequently bishops[2] and Christian people by interposing their supplications have averted punishments, and death penalties especially; also that the custom had been introduced that they who had taken refuge in a church,[3] should not be given up except under a pledge that their lives would be spared, and that about Easter time[4] those who were being kept in prison on account of their crimes should be set free. But he who will take the pains to weigh all the facts cited, and others like them, will find that these are the manifestations of Christian goodness which seizes every opportunity to show mercy, not of

[1] Zonaras [*History*, XIII. v. 11; speaking of Constantine the Great]: 'He would show himself clement to those who had abandoned a wicked life, saying that a limb which was diseased and decaying must be cut off, in order not to spread contagion to parts that were healthy, but not a limb that was either already healed, or in process of healing.' See also Eusebius [*On the Life of Constantine*, IV. xxxi].

Just as you find Christians complaining of the leniency of Constantine as too great, so in Saxo the historian you may find the Danes making complaint about the leniency of their King Harold [*History of Denmark*, Book XI].

[2] Augustine [*Letters*, cliii. 1]: 'It is the duty of a priest to intercede on behalf of those under accusation.' In his letters there are many examples of such goodness.

[3] See Chrysostom, *On the Statues*, Homily XVI; [*First*] *Council of Orleans*, chap. iii; *Law of the Visigoths*, Book VI, title v, chap. 16; Book IX, title ii, chap. 3 [VI. v. 16, *If a Murderer flees for Refuge to a Church*; IX. iii. 3, *On the Penalty for dragging a Man away from a Church*; ed. Zeumer].

[4] *Code*, I. iv. 3.

a spirit that condemns all judicial proceedings involving the death penalty. Hence such kindnesses, and even intercessions, were restricted by various exceptions [1] arising from both place and time.

11. At this point in opposition to the view advocated by us some present the twelfth canon of the Council of Nicaea, which runs as follows:

> Those who, having been called by grace,[2] at first manifested their zeal and faith and laid off their soldier's belt, but afterward returned as dogs to their vomit, some even having given money and offered inducements in order to get back into military service—let them, after having been hearers for three years, remain in penitence for ten years. In the case of all of them, however, it is needful that the purpose and the manner of their repentance be kept in view. They who through fear, and tears, and long-suffering, and good works do show forth a sincere conversion shall, on completing their term as hearers, [35] be permitted to take part in the prayers, and after that it shall be permissible for the bishop to be more kindly disposed toward them. But they that have acted with indifference, and have thought that the formality of entering a church was alone sufficient for conversion, are to complete the appointed term without any reduction.

The period of thirteen years clearly enough indicates that we are here dealing not with a fault that is trivial or open to question but with a serious and undoubted offence.

12. Now the matter here dealt with is beyond doubt idolatry.[3] For the mention of the times of Licinius in the eleventh canon, which precedes, ought to be considered as silently repeated in this canon. It often happens that the meaning of canons which follow depends on the meaning of those which precede; for an example reference may be made to the eleventh canon of the Council of Elvira.

Licinius, in fact, in the words of Eusebius, 'forced men out of military service unless they would offer sacrifice to the gods.' [4] His example was afterward imitated by Julian, and for that reason Victricius and others, we read, cast away the soldier's belt for Christ. The same thing had been done previously, under Diocletian, by eleven hundred and four soldiers in Armenia, of whom mention is

On the Life of Constantine, I. liv.

[1] For these exceptions see Cassiodorus [*Variae*], XI. xl; also, among other references, *Decretals*, III. xlix. 6.

[2] Simeon Magister gives an epitome of this canon:

> Those who seemed to offer resistance when violence was attempted, but who have been vanquished by impiety and have again entered military service, are to be excluded from communion for ten years.

The same meaning of this canon is expressed by Balsamon and Zonaras, and by Ruffinus, Book X, chap. vi.

[3] This as the principal crime is called by Tertullian, *On Idolatry* [chap. i], 'the highest offence chargeable against the world'; and by Cyprian, *Letters*, xii [x. 1], 'the most grave and utmost sin'.

[4] Sulpicius Severus [*Sacred History*, II. xxxiii]: 'Licinius, because he was contending with Constantine for the sovereign power, had ordered his soldiers to offer sacrifice; those who refused he rejected from military service.' For the same reason Valentinian, who afterward became emperor, left the service under Julian. Similar is the fact related by Victor of Utica [Victor Vitensis, *Persecution of the Vandals*, II. vii], that under King Huneric many abandoned the calling of arms, because it had been associated with Arianism.

made in the martyrologies, and in Egypt by Mennas and Hesychius. Under such conditions in the time of Licinius many cast away their belts; among them was Arsacius, who is named among the confessors, and Auxentius, who afterward became bishop of Mopsuestia.

In consequence, soldiers who, pricked in conscience, had once cast away their belts, could not return to military service under Licinius except by adjuring their Christian faith; and since that step was all the more reprehensible for the reason that their former act evidenced in them a fuller knowledge of the divine law, such backsliders are punished more severely even than those dealt with in the preceding canon, who had renounced Christianity without running any risk of the loss of life or of property. To interpret the canon which we have quoted as referring broadly to all military service is altogether unreasonable. History in fact plainly testifies that those who had renounced military service under Licinius, and, in order that they might not do violence to their Christian faith, had not returned to it while Licinius was in power, received from Constantine an option, to remain exempt from military service if they so desired, or to return to military service; beyond doubt many chose the latter alternative.

[Eusebius, *On the Life of Constantine*, II. xxxiii.]

13. Some urge in opposition also the letter of Leo, which says: 'It is contrary to the rules of the Church, after an act of penitence, to return to secular service of arms.' But we must know that in the case of penitents no less than in that of the clergy and ascetics there was required a mode of life not merely Christian, but of conspicuous holiness, in order that their example might be as effective for correction as it had previously been for the committing of sin.[1] Similarly in the most ancient formulated customs of the Church which, to render them more acceptable through a more impressive name, were commonly called the *Apostolic Canons*, in the eighty-second canon the rule is laid down: 'Let no bishop, priest or deacon devote himself to the profession of arms, and at the same time remain in the service of Rome and retain his priestly function. To Caesar belong the things that are Caesar's, and unto God the things that are God's.' By this very statement it is made clear that Christians who did not aspire to the honour of the clerical profession were not forbidden to engage in military service.

14. It was, furthermore, forbidden to admit to the clerical profession[2] those who, after baptism, had taken office as magistrates

[1] Leo, letter xc, *To Rusticus* [Leo the Great, *Letters*, clxvii]: 'He who asks pardon for things forbidden ought [45] also to refrain from many things which are permissible.'

In the letter of the bishops to King Louis we read: 'A man ought to cut himself off from things permissible in the degree that he remembers that he has done things which were not permissible'; in the *Capitularies* of Charles the Bald: 'Let each seek greater gains through good works in proportion as he has brought greater losses on himself through fault.'

[2] Eusebius, *Demonstrations*, Book I [chap. viii], describes the Christian life as of two types, the

or had assumed military responsibilities, as may be seen in the letters of Syricius and Innocent, and in the canons of the Council of Toledo. Candidates for orders, as we know, were chosen not from among Christians of any and every sort but only from among those who had presented an example of the most correct life. Again, the obligation imposed by military service and by some magistracies was permanent; but those who were set aside for the sacred office were not to allow themselves to be distracted by any outside responsibility or [36] daily task.[1] For this reason the sixth canon ordered that no bishop, priest or deacon should administer secular interests, the eightieth that they should not become involved in public administration. The sixth of the African canons ordered that they should not assume charge of the interests of others,[2] or the defence of others' causes. Consistently with this decree Cyprian [3] thinks it altogether wrong for these officers of the Church to be appointed guardians.

15. In support of our view we have the clearly formulated judgement of the Church in the first Council of Arles, which was held under Constantine. The third canon of that Council reads thus: 'In regard to those who cast away their arms in time of peace, it was decreed that they abstain from the communion.' This has reference to those who deserted from the army in times when there was no persecution; for that is what Christians meant by the term peace,[4] as is apparent from Cyprian and others. There is the further example of the soldiers under Julian, whose progress in Christianity was so great that they were ready to bear witness to Christ by their death. Ambrose speaks of them in these words:

[*Decretum*, II. xi. 3. 94= Augustine, *Letters*, cv.

> The Emperor Julian, although an apostate, nevertheless had Christian soldiers under him. When he said to them, 'Go into battle in defence of the state,' they were obedient to him; but when he would say to them, 'Bear arms against Christians,' they recognized as their leader the ruler of heaven.

Such spirit long before had been manifested by the Theban

one perfect, the other falling short of perfection. Christians who represent the latter type among other things 'point out to those who are engaged in just warfare what their duty is'.

[1] See the canon of the Council of Mainz in Gratian, *Decretals* III. l. 1.

[2] See the letter of Jerome *To Nepotianus* [lii].

[3] In his letter *To the Priests, Deacons, and People at Furni* [*Letters*, lxv]. Add the law, *Code*, I. iii. 51 (52).

[4] Tertullian, *On Idolatry* [xix]: 'Nay, how even in peace will the Christian render military service?' The same writer, *On Flight in Persecution* [iii]: 'What war does our peace have, excepting persecution?'

Cyprian, *Letters*, x [ix. 3]: 'When the first thing is that our mother, the Church, should first have received peace from the mercy of the Lord'; *Letters*, xxii [xxi. 2; letter of Lucian]: 'Since the Lord has begun to give peace to the Church'; *Letters*, xxxi [xxxi. 5; the Roman clergy to Cyprian]: 'That the peace of the Church must be maintained,' that is, is to be expected; *On the Lapsed* [chap. v]: 'long peace had corrupted the discipline.'

Sulpicius Severus [*Sacred History*, II. xxxii]: 'During the reign of Antoninus Pius the churches had peace'; later [xxxii. 2], 'after an interval of thirty-eight years the Christians had peace'; and in the period of Constantine [xxxiii. 3], 'since then we have been enjoying a condition of tranquillity in peace'; also, at the beginning of his *History* [I. 1. 3]: 'Tormentings of the people of Christ, and then times of peace.'

legion, which in the reign of Diocletian had received the Christian religion from Zabdas, thirtieth bishop of Jerusalem, and afterward gave an example of Christian steadfastness and long-suffering memorable for all time. To this example we shall refer later.

[I. iv. 7. 10 ff.]

16. Here it may suffice to quote the utterance of the members of the Theban legion, which with compact brevity sets forth the duty of the Christian soldier:

> To oppose any foe whatsoever we offer our hands, which we deem it impious to stain with the blood of the innocent. Our right hands themselves know how to fight against wicked men and enemies; they do not know how to tear in pieces righteous men and fellow citizens. We remember that we took up arms on behalf of citizens rather than against citizens. We have always fought on behalf of justice, on behalf of loyalty, on behalf of the safety of the innocent; up to the present time this has been the reward for our dangers. We have fought on behalf of the faith; and how are we to keep our faith toward you—the words are addressed to the Emperor—if we do not show forth faith toward God?

Basil spoke thus of the Christians of the earlier time:

> Slayings in war our ancestors did not consider as murder; they considered that those who fight in defence of virtue and righteousness are absolved.

CHAPTER III

DISTINCTION BETWEEN PUBLIC AND PRIVATE WAR; EXPLANATION OF SOVEREIGNTY

I.—*Division of war into public and private*

[46] 1. THE first and most essential division of war is that into public war, private war, and mixed war.

Syl., word *bellum*, I, no. 1.

A public war is that which is waged by him who has lawful authority to wage it; a private war, that which is waged by one who has not the lawful authority; and a mixed war is that which is on one side public, on the other side private. Let us deal first with private war, as the more ancient.

2. That private wars in some cases may be waged lawfully, so far as the law of nature is concerned, is, I think, sufficiently clear from what was said above, when we showed that the use of force to ward off injury is not in conflict with the law of nature. But possibly some may think that after public tribunals had been established private wars were not permissible. For although public tribunals are the creation not of nature but of man, it is, nevertheless, much more consistent with moral standards, and more conducive to the peace of individuals, that a matter be judicially investigated by one who has no personal interest in it, than that individuals, too often having only their own interests in view, should seek by their own hands to obtain that which they consider right; wherefore equity and reason given to us by nature declare that so praiseworthy an institution should have the fullest support. Says Paul the jurist, 'Individuals must not be permitted to do that which the magistrate can do in the name of the state, in order that there may be no occasion for raising a greater disturbance.' 'The reason', King Theodoric[1] said, 'why laws were clothed with a reverential regard, was that nothing might be done by one's own hand, nothing on individual impulse. For what difference is there between tranquil peace and the hurly-burly of war, if controversies between individuals are settled by the use of force?'

Dig. L. xvii. 176.

Cass., *Variae*, IV. iv [IV. x].

The laws term it a use of force 'when an individual tries to enforce his claim to what he thinks is due him without having recourse to a judge'.

Digest, IV. ii. 13.

[1] See the *Edict* of Theodoric, chaps. x and cxxiv.

II.—*The proposition, that according to the law of nature not all private war is unpermissible since the establishment of courts, is defended, illustrations being added*

1. It is surely beyond doubt that the licence which was prevalent before the establishment of courts has been greatly restricted. Nevertheless there are circumstances under which such licence even now holds good, that is, undoubtedly, where judicial procedure ceases to be available. For the law which forbids a man to seek to recover his own otherwise than through judicial process is ordinarily understood as applicable only where judicial process has been possible.

Now judicial procedure ceases to be available either temporarily or continuously. It ceases to be available temporarily[1] when one cannot wait to refer a matter to a judge without certain danger or loss. It ceases to be available continuously either in law or in fact: in law, if one finds himself in places without inhabitants, as on the sea, in a wilderness, or on vacant islands, or in any other places where there is no state; in fact, if those who are subject to jurisdiction do not heed the judge, or if the judge has openly refused to take cognizance.

Molina, *Disp*, 100, § dubio vero.

2. What we said, that even after the establishment of courts not all private wars were in conflict with the law of nature, can be supported also from the law which was given to the Jews; for therein through the agency of Moses God said (*Exodus*, xxii. 2): 'If the thief be found breaking in, and be smitten so that he dieth, there shall be no bloodguiltiness for him. If the sun be risen upon him, there shall be bloodguiltiness for him.'

It seems clear that this ordinance, which makes so careful a distinction, not only assures impunity but also explains the law of nature, and that it is not founded upon a special divine mandate, but grounded in common equity. Hence, we see, other nations also followed it. Well known is the provision of the Twelve Tables, undoubtedly taken from the ancient Attic law[2]: 'If a theft has been committed at night, and any one has killed the thief, be it that the thief was rightly slain.' Thus by the laws of all peoples known to us the person who in peril of his life has by means of arms defended himself against an assailant is adjudged innocent. An agreement so manifest furnishes in itself the proof that in it there is nothing in conflict with the law of nature.

[*Macrobius, Saturnalia*, I. iv. 19.]

[1] Servius, *On the Aeneid*, XI [X, line 419], on the words 'The fates laid hand upon him' (*Iniecere manum Parcae*): 'They took what was due to them. The poet here used a legal expression, for there is said to be a "laying on of the hand" when, without authority from a judge, we lay claim to a thing that is due to us.'

[2] The words of Solon [Demosthenes, *Against Timocrates*, xxiv. 113 = p. 736]: 'If any one in the daytime steal in an amount exceeding fifty drachmas, it shall be right to take him before the Eleven; but if any one steal at night, even the least thing, it shall be permitted even to kill him.'

Add what is said below in the second book, chap. xii [II. i. 12].

III.—*The proposition is defended that private war in some cases is permissible even according to the law of the Gospel, objections being met*

1. In the case of the volitional divine law in its more perfect form, that is, the law of the Gospel, [47] a greater difficulty presents itself. I do not doubt that God, Who has over our lives a more absolute right than we ourselves, might have required of us so great a degree of forbearance that, as individuals, when confronted with danger, it would be our duty to allow ourselves to be killed rather than to kill. But did God purpose to bind us in so extreme a fashion ? That is the point which we are to investigate.

On the affirmative side, two passages are commonly brought forward to which, in the discussion of the general question, we have [I. ii. 8. 3, 12.] already referred. They are : ‘ But I say unto you, Resist not him that is evil ’ (*Matthew*, v. 39) ; and ‘ Avenge not yourselves, beloved ’ (*Romans*, xii. 19), where the Latin translation has ‘ Defend not yourselves, beloved ’. A third passage is in the words of Christ to Peter : ‘ Put up again thy sword into its sheath ; for all they that [*Matthew*, xxvi. 52.] take the sword shall perish with the sword.’ In this connexion some add also the example of Christ, who died for his enemies (*Romans*, v. 8, 10).

2. Among the early Christians there was no lack of those who did not indeed disapprove of public war, but who thought that in the case of an individual self-defence was forbidden. The passages of Ambrose favourable to war we quoted above. [I. ii. 9. 9.] Familiar to all are the statements of Augustine, which are even more numerous and more clear. But the same Ambrose says : [*On Luke*, X [liii].] ‘ And perchance He said to Peter, who offered him two swords, “ It is enough,” as if He had said that the use of the sword in self-defence was permissible up to the time of the Gospel ; with the implication that the teaching of the law stressed equity, while the teaching of the Gospel stressed truth.’ And in another passage he adds : [*On Duties*, III. iii [III. iv].] ‘ The Christian, even if he fall in the way of an armed brigand, cannot strike in turn one who strikes him, from fear that, while defending his safety, he mar his piety.’

‘ I find no fault ’, says Augustine, [*On Free Will*, I. v [12].] ‘ with the law which permits the slaying of such people ’ (brigands and others who assault with violence), ‘ but I do not see how to justify those who put them to death.’ In another connexion he declares : [*Letters*, cliv [xlvii. 5], *To Publicola*.] ‘ The idea of killing men in order not to be killed by them is not acceptable to me, unless, perchance, in the case of a soldier or of a public functionary acting not for himself but on behalf of others, in the exercise of a lawful

Chaps. 43 and 55 [*Letters*, cxcix. 43]. authority.' It is plain enough, from Basil's second letter to Amphilochius, that he held the same view.[1]

3. The contrary opinion, that no such degree of forbearance is required, is certainly more common, and also seems to me more true. For in the Gospel we are bidden to love our neighbour as ourselves, not above ourselves; further, if a like evil threatens, we are not forbidden to look out for ourselves in preference to others,[2] as we showed above on the authority of Paul when he was explaining the rule of kindness. [I. ii. 8. 6.]

Perhaps some one may press the point and say: 'Even if I may be able to give the preference to my own advantage over the advantage of my neighbour, this would not hold in the case of unequal advantages; wherefore I ought rather to give up my life than to suffer that my assailant fall into eternal damnation.' But the answer may be made that in many cases even the man who is attacked has need of time for repentance, or probably thinks he has; and the assailant also may have time for repentance before death. Further, from the point of view of morals it is not clear that that ought to be accounted a danger into which a man has thrown himself, and from which he can extricate himself.

4. Up to the very last some of the Apostles, under the eye of Christ and with his knowledge, certainly seem to have made their journeys armed with swords. From Josephus we learn that other Galileans, when hastening from their country toward Jerusalem, did the same thing, because the roads were infested with highwaymen; and he has reported a similar practice on the part of the Essenes, the most inoffensive of men. [*Jewish War*, II. viii. 4.] Thus it came about that when Christ was saying that the time was at hand when even a garment should be sold in order to buy a sword (*Luke*, xxii. 36), the Apostles at once answered that among their company there were two swords; and in that [48] company there were none except Apostles.

What Christ said, then, does not in truth embody a command; it is, rather, a proverbial expression, indicating that extremely serious dangers threatened. This is clearly shown by the contrasting reference to the earlier time (verse 35), which had been safe and propitious. Nevertheless the words are such as plainly to suggest what was customary, and what the Apostles considered permissible.

[*For Milo*, iv. 10.] 5. Rightly did Cicero declare that 'It would surely not be

[1] Add the canon of the Council of Orleans cited by Gratian, *Decretum*, II. xiii. 2. ult.

[2] Cassiodorus, *On Friendship* [cf. Peter of Blois, *On the Love of God and Neighbour*, xi]: 'Truly no one is bound by any commandment, or any reason, to accomplish the safety of his neighbour's soul by the loss of his own soul, or the freeing of his neighbour's body by the destruction of his own body, save only when the hope of eternal salvation is at stake.'

permissible to have swords, if it were not in any way permissible to use them'. Again, the precept 'Resist not him that is evil' is not more general in its application than that which follows, 'Give to every one that asketh thee.' The latter, nevertheless, is modified by the restriction, provided that we do not overburden ourselves. Nothing is added to the precept about giving which restricts its application, and it is limited by the sense of equity alone; but the precept about not resisting carries with it an explanation in the concrete example of a slap. It is, then, to be understood that the obligation not to offer resistance is absolutely binding upon us only when the injury which threatens us is either a slap, or something in the same class. Otherwise it would have been more in accordance with what is right to say: 'Resist not him that doeth injury, but give up life itself rather than to make use of weapons.'

6. In the words of Paul to the Romans, 'Avenge not yourselves,' the Greek has the meaning 'avenge', not 'defend'; so also *Judith*, i. 11, and ii. 1; *Luke*, xviii. 7, 8, and xxi. 22; *2 Thessalonians*, i. 8; *1 Peter*, ii. 14; *Romans*, xiii. 4; *1 Thessalonians*, iv. 6. This is made perfectly plain by the context; for the injunction 'Render to no man evil for evil' had preceded, and these words are applicable only to revenge, not to defence. And in support of his contention Paul cites the sentence from *Deuteronomy*: 'Justice is [xxxii. 35.] mine, I will repay,' where the Hebrew has 'to me also vengeance'. Both the proper use of the term in Hebrew shows that vengeance is meant, and the meaning of the passage does not permit us to suppose that defence can be referred to.

7. What was said to Peter does in fact contain a prohibition of the use of the sword, but not of such use in defence. Peter did not have need to defend himself; for in regard to his disciples Christ had already said (*John*, xviii. 8, 9): 'Let these go their way, that the word might be fulfilled which he spake, of those whom thou hast given me I lost not one.' And there was no need to defend Christ, for he did not wish to be defended. So in the narrative of John Christ adds the reason for the prohibition (*John*, xviii. 11): 'The cup which the Father hath given me, shall I not drink it?' And in *Matthew* he says: 'How then should the Scriptures be [xxvi. 54.] fulfilled, that thus it must be?' Peter, then, being impetuous, was impelled by a desire for revenge, not for defence. Further, he was taking up arms against those who were coming as representatives of the public authority; whether under any circumstances resistance should be offered to those representing the public authority is a question by itself, to which we must return later.

Now the sentence which our Lord adds, 'All they that have taken up the sword shall perish by the sword,' is either a proverb

taken from common usage, signifying that bloodshed is provoked by bloodshed, and that in consequence the use of weapons is never free from hazard; or, in accordance with the opinion held by Origen, Theophylactus, Titus, and Euthymius, it means, that we ought not to forestall God by taking the vengeance which He himself will sufficiently exact in His own time. Evidently of such import is the verse in *Revelation* (xiii. 10): 'If any man shall kill with the sword, with the sword must he be killed. Here is the patience and the faith of the saints.' In agreement therewith is the comment of Tertullian:

[*On Patience*, xv.] 'An all-sufficing Depositary for our patience is God. If you leave with Him a wrong, He is the avenger; if suffering, He is the physician; if death, He raises from the dead. How great is the privilege of patience, to have God as her Debtor!' At the same time, in these words of Christ [49] there seems to be a prophecy of the punishment which the sword of the Romans was to exact from the blood-guilty Jews.

8. As for the example of Christ, when we are told that He died for His enemies the rejoinder may be made that all the acts of Christ exemplify virtue in fullest measure, that it is praiseworthy to imitate them, so far as possible, and that such imitation will not fail of its reward; nevertheless not all His acts are of such a character that they proceed from a law, or themselves establish a law. For in dying for His enemies and for the ungodly Christ acted not in obedience to any law, but in accordance with a special promise and covenant, as it were, made with the Father; if He should thus die the Father promised to Him not only supreme glory but a people that should endure forever (*Isaiah*, liii. 10). That in other respects this act is as it were unique, to which scarcely any parallel can be found, Paul shows (*Romans*, v. 7). Christ, furthermore, bids us expose our lives to danger not for any and every person, but on behalf of them that share the same profession (*1 John*, iii. 16).

9. The opinions which are cited from the Christian writers seem in part to embody counsel and exhortation to a lofty purpose rather than a rigid rule; in part they are the personal views of the writers themselves, and do not reflect opinions shared by the whole

Can. xlv [lxiv]. *Decretals*, V. xxxix. 3 and V. xii. 16. Church. In fact in the most ancient canons, which are called Apostolic, only he is cut off from the communion who in a quarrel has killed his opponent with the first blow 'on account of the excess of passion'.[1] This opinion Augustine himself, whom we have quoted for the opposite view, seems to approve (*On Exodus*, qu. lxxxiv).

[1] Ambrose, *On Luke*, Book X [chap. liii]: 'Lord, why dost thou bid me purchase a sword whilst thou biddest me not to strike? Why dost thou direct that a sword be carried which thou forbiddest to have drawn? Unless, perhaps, that defence be in readiness, vengeance not necessary.'

IV.—*Division of public war into formal and less formal*

1. Public war is either formal, according to the law of nations, or less formal.

The word 'formal' I use here as equivalent to 'legal' (*iustum*) in the sense in which we speak of a legal will (*iustum testamentum*) as distinguished from codicils, and a legal marriage as distinguished from the union of slaves (*contubernium*). This does not mean that it is not permissible for any one to make codicils who may desire to do so, or for a slave to have a woman living with him (*in contubernio*); [1] but it does mean that from the point of view of the civil law the formal will and the formal marriage have certain peculiar effects. It is useful to note this distinction; for many, having a wrong understanding of the word 'legal' (*iustum*) in such a connexion think that all wars, to which the adjective 'legal' (*iusta*) is inapplicable, are under condemnation as inconsistent with justice or not permissible.

In order that a war may be formal, according to the law of nations, two conditions are requisite: first, that on both sides it be waged under the authority of the one who holds the sovereign power in the state; then, that certain formalities be observed, which we shall discuss later in the proper connexion. Since both conditions are conjointly requisite, one without the other does not suffice.

2. A less formal public war may lack the formalities referred to, may be waged against private persons, and on the authority of any public official. And surely if the matter be viewed without reference to the laws of particular states, it would seem that every public official has the right to wage war for the protection of the people entrusted to his charge, and also in order to maintain his jurisdiction if assailed by force. But because the whole state is endangered by war, provision has been made by the laws of almost every state that war may be waged only under the authority of him who holds the sovereign power in the state.

Such a provision is to be found in the last book of Plato *On Laws*. In the Roman law he is declared guilty of treason who has waged war, or made a levy, or brought together an army without the order of the emperor; the Cornelian Law, proposed by Lucius Cornelius Sulla, had said, 'without the order of the people.' In the *Code* of Justinian, there is extant an imperial constitution of Valentinian and Valens bearing on the same point: 'No person shall have [XII. vii.] *Digest*, XLVIII. iv. 3. [XI. xlvii. 1.]

[1] Among citizens there were certain marriages which were not 'formal' (*iusta*); children not 'legitimate' (*iusti*) according to civil law. Paul, *Sententiae*, Book II, title xix [II. xix. 6]; *Digest*, XLVIII. v. 14 (13); so also there is a kind of liberty that is not 'formal' (*iusta*). Seneca, *On the Happy Life*, chap. xxiv; Suetonius, *Octavius* [*Octavianus*], chap. xl.

the authority to inaugurate a movement of arms of any sort without our knowledge and without consulting us.' Here belongs the statement of Augustine:[1] 'The order which is according to nature and adapted to the maintenance of peace among mortals [50] demands that the authority and the decision in respect to commencing war reside in those who hold the chief authority.'

Vict., *De Iure Belli*, no. 9. Molina, *Disp.*, 100, § *idem Vict.* Bartolus, *On Dig.*, I. i. 5. Bart., *On Reprisals*, 3 principali, ad secundam, no. 6. Martinus Laud., *De Bello*, qu. 2. Livy, XXXIX [XXIV. xxxvii–xxxix].

3. But as all statements, no matter how general, are to be interpreted in the light of justice, so also is this law. For in the first place it cannot be doubted that it is permissible for a public official, who has proper authority over a district, through his subordinates to restrain by force a few that are disobedient, whenever there is no need of larger forces for the purpose, and danger does not threaten the state.

Again, if the danger is so pressing that time does not permit consultation with him who has the supreme authority in the state, in that case also necessity will make an exception. Of such a justification Lucius Pinarius, who was in command of the garrison at Enna, in Sicily, availed himself. Having learned with certainty that the people of the town were planning to revolt to the Carthaginians, he had them massacred, and so held possession of Enna. When no such necessity was present, Franciscus de Victoria presumed to ascribe to citizens of towns the right to carry on war in order to redress wrongs which the king had neglected to prosecute; but his view is deservedly rejected by others.

V.—*Whether there may be a public war waged by the authority of a public official not having sovereign power, and when*

Ayala, *De Iure Belli*, I. ii, no. 7; Sylv., word *bellum*, no. 2. Innocent, in *Decretals*, II. xiii. 12, no. 8; II. xxiv. 29, no. 5. Panor., *ibid.* Bartolus, *On Dig.*, XLIX. xv. 24.

1. The jurists, however, are by no means agreed regarding the circumstances under which minor public officials may have the right to inaugurate a movement of arms, or whether such a war should be called a public war. The affirmative view is held by some, the negative by others.

Truly if we use the word public as including whatever is done by the authority of an official, there is no doubt that such wars are public, and consequently those who under conditions of this sort oppose public officials expose themselves to the punishment awaiting men that stubbornly resist their superiors. But if the word public is understood in a higher sense as characterizing that which is done with due formality, as beyond question this word often is, such wars are not public, for the reason that both the decision of the sovereign

[1] *Against Faustus*, Book XXII, chap. lxxiv [lxxv], cited by Gratian, *Decretum*, II. xxiii. i. 4.

Among the Hebrews every war which was [not] undertaken by special command of God was called 'a war of the powers'.

power and other conditions are necessary for the fulfilment of the legal requirements involved. And I am not affected by the consideration that even in disturbances of the kind under consideration men who resist authority are ordinarily deprived of their property,[1] which may even be turned over to the soldiers. For such occurrences are not so peculiar to formal war that they may not also take place under other conditions.

Livy, as cited above.

2. This situation, moreover, may arise, whereby in an empire having a wide extent of territory, subordinate authorities may have a delegated power [2] of beginning war. If such a situation does arise, we are to consider that the war is actually being waged by virtue of the sovereign authority; for he who vests another with the right to do anything is himself regarded as doer of it.

3. A more controverted question is whether, in case such an authorization has not been given, the presumption that such an authorization is intended will be sufficient.

Vict. no. 29. Cajetan, *On II. ii*, 40, art. 1. Sylv., word *bellum*, pt. 1, no. 2. Lorca, *Disp.* l, no. 12.

The affirmative view ought not, I think, to be conceded. For it is not enough to consider what under such conditions would be acceptable to him who holds the sovereign power if he could be consulted; the real point to be considered is, what he would wish to have done without consulting him in a matter admitting delay, or of doubtful expediency, if a general law covering the case were to be passed. For although in a particular instance a consideration influencing the decision of the head of the state may seem, if examined from a particular point of view, to be inapplicable, yet, generally speaking, the consideration arising from the desire to avoid danger does not cease to apply. This general consideration cannot have its proper weight if every public official takes the decision of such questions into his own hands.

4. Not without just reason, then, was Gnaeus Manlius accused by his legionary commanders because he had made war upon the Galatians without the authorization of the Roman people. For although there had been legions of Gauls in the army of Antiochus, nevertheless, after peace had been made with Antiochus, the question, whether punishment for that offence should be visited upon the Galatians, was not for Gnaeus Manlius to decide but for the Roman people.

Livy, XLVIII [XXXVIII. xlv ff.].

Cato wished to have Julius Caesar delivered up to the Germans because he had made war on them; but I believe that he had in mind not so much the question of right as a desire to free the city

[1] To the jurists cited for this point may be added Franciscus Aretinus, *Consilia*, xiv, no. 7; Gail, *De Pace Publica*, I, chap. ii. no. 20; Cardinal Toschi, *Practicae quaestiones*, LV, letter B, word 'bellum', no. 10. Goeddaeus, *Cons. Marp.*, XXVIII, nos. 202 ff.

[2] See the law of the Emperor Frederick, in Conrad, Abbot of Ursperg [Bavaria].

from the fear of a prospective master. The Germans, in fact, [51] had helped the Gauls, who were enemies of the Roman people, and consequently they had no reason to complain that a wrong had been done to them, provided the Roman people had a just cause for making war on the Gauls. But Caesar ought to have been satisfied with driving the Germans out of Gaul, the province which had been assigned to him; he ought not to have carried war against them into their own territory without first consulting the Roman people, especially since there was no imminent danger from that source. The Germans therefore did not have the right to demand that Caesar be surrendered to them, but the Roman people had the right to punish him, on grounds clearly similar to those which the Carthaginians set forth in their answer to the Romans:

Livy, XXXI [XXI. xviii. 6].

> I consider that the question at issue is not whether Saguntum was attacked in accordance with a decision of an individual or of the state, but whether it was attacked rightfully or wrongfully. For the question whether our citizen acted in accordance with our decision, or his own, is our business, and to us belongs the punishment of a citizen of ours. The subject of discussion between you and us is merely, whether under our treaty the attack was permissible.

5. Marcus Tullius Cicero defended the action of Octavius and of Decimus Brutus in taking up arms against Antony on their own initiative. And yet, even if it were settled that Antony deserved to be treated as an enemy, they ought to have waited for the decision of the senate and the Roman people as to whether it was in the public interest to overlook the action of Antony or to avenge it; to come to terms of peace, or rush to arms. No one, in fact, is compelled to avail himself of a right of which the use frequently involves the risk of loss. Again, even if Antony were adjudged a public enemy, it was for the senate and the Roman people to decide to whom they would prefer that the conduct of the war should be entrusted. Thus, when Cassius requested auxiliary troops of the Rhodians in accordance with the treaty, they answered that they would send the forces if the Roman senate should so direct.

Appian, *Civil Wars*, IV [ix. 66].

6. This illustration—and there are many others—may serve to remind us that we are not to receive with approval everything which authors, no matter how famous, may tell us; they are under the influence often of their times, often of their feelings, and they fit 'their measuring-rule to the stone'. Wherefore in these matters we must make every effort to use a discriminating judgement and not allow ourselves rashly to seize upon something as a precedent which can be exculpated rather than praised. In the use of such a method vicious errors are commonly committed.

7. Since, then, it has been said that a public war ought not to be waged except by the authority of him who holds the sovereign

power, for the understanding both of this subject and of questions relating to formal war, and consequently for the understanding of many other questions, it will be necessary to understand what sovereignty is, and who hold it. This inquiry is all the more necessary because learned men of our own age, treating the matter from the point of view of usage under present conditions rather than from that of the truth, have added greatly to the complexity of the subject, which in itself was far from simple.

VI.—*In what the civil power consists*

1. The moral faculty of governing a state, which is ordinarily designated by the term civil power, is described by Thucydides as [V. xviii.] having three characteristics. He speaks of a state, which truly is a state, as 'having its own laws, courts, and public officials'.[1]

Aristotle distinguishes three parts in the government of a state: *Politics*, IV. iv [IV. xiv]. deliberation in regard to matters of common interest; the choice of officials; and the administration of justice. To the first he refers deliberation in regard to war, peace, the making and abrogation of treaties, and legislation. To this he adds, further, deliberation in regard to the death penalty, exile, confiscation of property, and proceedings in cases of extortion, that is, as I interpret the passage, the administration of justice in criminal cases, since previously in treating the administration of justice he has dealt with cases involving the interests of individuals only.

Dionysius of Halicarnassus notes three principal functions: Book IV [xx]. the right to create and appoint to public offices; the right to make and abrogate laws; and the right of decision regarding war and peace.[2] In another passage he adds a fourth, the right to render Book VII [lvi]. judicial decisions; elsewhere, again, he includes also the adminis- Book II [xiv]. tration of matters pertaining to worship, and the convening of assemblies of the people.

2. Now if one wishes to make an exact [52] division he will find it possible easily to include everything relating to civil power in such a way that there will be nothing omitted and nothing superfluous. For he who governs a state governs it in part through his own agency, in part through others. He governs through his own agency by devoting his attention either to general interests or to particular interests. In devoting himself to general interests he

[1] The translation 'taxes' can also be used; in this sense the Scholiast to Thucydides understood it. The word *αὐτοτελῆ* has a twofold meaning.

[2] [71] Servius, *On the Aeneid*, I [line 236], comments on the words 'with unlimited sway' (*omni dicione*) [literally 'with every sway']: 'more correctly "who should hold the sea and the lands with unlimited sway" than "the sea and all the lands with their sway"; purposing to convey the meaning "all power, peace, laws, war".'

concerns himself with framing and abrogating laws respecting religious matters (so far as the care of religious matters belongs to the state) as well as secular. The branch of the science of government which deals with such matters Aristotle calls architectonic, 'the architectural'.

[*Nicomachean Ethics*, vi. 8.]

The particular interests, with which he who governs concerns himself, are either exclusively public interests, or private interests which have a relation to public interests. Exclusively public interests are either actions, as the making of peace, of war, and of treaties; or things, such as taxes, and other things of a like nature, wherein the right of eminent domain, which the state has over citizens and over the property of citizens for public use, is included. The branch of the science of government which deals with such matters Aristotle designates by the general term 'political', that is 'civil', and 'deliberative'.

Private interests [as here understood] are controversies between individuals the termination of which by public authority is important for the tranquillity of the state. The branch of the science of government concerned therewith is called by Aristotle 'the judicial'.

The affairs that are administered through others are administered either through public officials, or through other responsible agents, among whom ambassadors are included.

In these things, then, the civil power consists.

VII.—*What sovereignty is*

1. That power is called sovereign whose actions are not subject to the legal control of another, so that they cannot be rendered void by the operation of another human will. When I say 'of another', I exclude from consideration him who exercises the sovereign power, who has the right to change his determinations; I exclude also his successor,[1] who enjoys the same right, and therefore has the same power, not a different power. Let us, then, see who is the subject of sovereignty.

The subject of a power is either common or special. Just as the body is a common, the eye a special subject of the power of sight, so the state, which we have defined above as a perfect association, is the common subject of sovereignty.

2. We exclude from consideration, therefore, the peoples who have passed under the sway of another people, such as the peoples of the Roman provinces. For such peoples are not in themselves a state, in the sense in which we are now using the term, but the inferior members of a great state, just as slaves are members of a household.

[1] Cacheranus, *Decisiones Pedemontanae*, cxxxix, no. 6.

Again, it happens that several peoples may have the same head, while nevertheless each of them in itself forms a perfect association. While in the case of the natural body there cannot be one head belonging to several bodies, this does not hold also in the case of a moral body. In the case of a moral body the same person, viewed in different relations, may be the head of several distinct bodies. A clear proof of this may be found in the fact that on the extinction of the reigning house, the right of government reverts to each people separately. Vict., *De Iure Belli*, no. 7.

It may also happen that several states are bound together by a confederation, and form a kind of 'system', as Strabo in more than one passage calls it, while nevertheless the different members do not cease in each case to retain the status of a perfect state. This fact was noted by other writers, and by Aristotle also in more than one passage. [IX. iii. 7; XIV. iii. 2.] *Politics*, II. xx [II. ii], III. ix.

3. It may be granted, then, that the common subject of sovereignty is the state, understood as we have already indicated.

The special subject is one or more persons, according to the laws and customs of each nation; 'the first power', according to Galen, in the sixth book of his treatise *On the Teachings of Hippocrates and Plato*.

VIII.—*The opinion that sovereignty always resides in the people is rejected, and arguments are answered*

1. At this point first of all the opinion of those must be rejected who hold that everywhere and without exception sovereignty resides in the people, [53] so that it is permissible for the people to restrain and punish kings whenever they make a bad use of their power. How many evils this opinion has given rise to, and can even now give rise to if it sinks deep into men's minds, no wise person fails to see. We refute it by means of the following arguments.

To every man it is permitted to enslave himself to any one he pleases for private ownership, as is evident both from the Hebraic and from the Roman Law. Why, then, would it not be permitted to a people having legal competence to submit itself to some one person, or to several persons, in such a way as plainly to transfer to him the legal right to govern, retaining no vestige of that right for itself? And you should not say that such a presumption is not admissible; for we are not trying to ascertain what the presumption should be in case of doubt, but what can legally be done.[1] *Exodus*, xxi. 6. *Instit.* I. iii. 2. Gell., II. vii [II. xviii].

It is idle, too, to bring up the inconveniences which result, or

[1] Gail, *De Arrestis*, chap. vi, 22 ff.

may result, from such a procedure; for no matter what form of government you may devise, you will never be free from difficulties and dangers. Says the comedy:

[Terence, *Self-tormentor*, II. iii. 84.]

> Have this with that, then, if you choose,
> Or that with this together lose.[1]

2. Just as, in fact, there are many ways of living, one being better than another, and out of so many ways of living each is free to select that which he prefers, so also a people can select the form of government which it wishes; and the extent of its legal right in the matter is not to be measured by the superior excellence of this or that form of government, in regard to which different men hold different views, but by its free choice.[2]

3. In truth it is possible to find not a few causes which may impel a people wholly to renounce the right to govern itself and to vest this in another, as, for example, if a people threatened with destruction cannot induce any one to defend it on any other condition; again, if a people pinched by want can in no other way obtain the supplies needed to sustain life. For if the Campanians, constrained by necessity, once made themselves subject to the Roman people[3] [Livy, VII. xxxi. 4.] in the manner indicated by these words: 'The people of Campania, and the city Capua, the lands, the shrines of the gods and all things of gods and men in our possession we give over, Conscript Fathers, [*Preface*, vii.] to your dominion';[4] and if, according to Appian, some peoples desiring to make themselves subject to the Roman people were not even permitted to do so, what is there to prevent any people from giving itself up, in the same way, to one exceedingly powerful man? [*Aeneid*, IV. 619 f.] In Virgil we read:

> Nor when, by terms of unjust peace compelled,
> Himself to sovereign power he shall subject.

It may happen, again, that the head of a house possessing great estates may be unwilling under any other conditions to allow permanent residents to come upon his lands; or that the owner of a great number of slaves may set them free upon condition that they submit to his authority and pay him taxes. For these supposed cases we do

[1] Cicero, *On Laws*, Book III [III. x. 23]: 'It is unfair in bringing forward every charge, to pass by good points, presenting only an enumeration of bad things and a selection of faults'; later, 'the good which is sought therein we should not have without the evil.'

[2] The city of Augsburg petitioned the Emperor Charles V that the decisions of the senate of their city should not become valid unless they had been approved by the ward officials; and at the same time the city Nuremberg asked just the opposite.

[3] As the Faliscans in Livy, Book V [V. xxvii], the Samnites in Book VIII [IX. xlii]. Thus the people of Epidamnus [modern Durazzo] abandoned by the people of Corcyra [modern Corfu], gave themselves over to the Corinthians, in order that they might be protected against the Taulantians and the exiles; Thucydides, Book I [I. xxv].

[4] Also the Venetians; Bembo [*History of Venice*], Book VI.

not lack concrete examples. Of the slaves of the Germans we read in Tacitus: [*Germany*, xxv.]

Each controls his own place of habitation, his own household. The master exacts from him a certain amount of grain, or live stock, or clothing, as from a tenant, and the slave renders obedience up to the limit of this requirement.

4. Further, as Aristotle said that some men are by nature slaves, that is, are suited to slavery, so there are some peoples so constituted that they understand better how to be ruled than to rule. Such an opinion the Cappadocians seem to have entertained in regard to themselves; they preferred life under a king to the freedom offered them by the Romans, declaring that they could not live without a king. So Philostratus, in his *Life of Apollonius*, says that it is absurd to grant to Thracians, Mysians, and Getans a freedom in which they do not have pleasure. [*Politics*, I. ii.] Strabo, XII [ii. 11]. Justin, XXXVIII [ii. 8]. Book VI [VII. iii].

5. Some, again, cannot fail to be impressed by the example of nations which for a number of centuries have lived happily enough under a form of government clearly monarchical.[1] According to Livy the cities which were under the rule of Eumenes[2] would not have been willing to exchange their lot for that of any free city. Sometimes the condition of a state is such that it seems possible to assure its safety only through [54] the unrestricted rule of one man;[3] such, in the view of many discerning persons, was the condition of the Roman state in the time of Augustus Caesar. Book XLII [v. 3].

For these and similar reasons, then, it not only can happen, but actually does happen, that men make themselves subject to the rule and power of another, as Cicero also observes, in the second book of his treatise *On Duties*. [II. vi. 22.]

6. Just as private property can be acquired by means of a war that is lawful (*iustum*), according to our use of the term above, so by the same means public authority, or the right of governing, can be acquired, quite independently of any other source. What has been said, again, must not be understood as limited to the maintenance of the rule of a monarch, when that is the type of govern- [I. iii. 4. 1.]

[1] Seneca, *On Benefits*, Book II, chap. xx, speaking of Brutus [in relation to Brutus's participation in the murder of Caesar]: 'For my part, although the man was great in other things, in this he seems to me to have committed a most serious error, and not to have conducted himself in accord with Stoic doctrine. Either he was afraid of the name of king, although the best condition of a state is under a just king; or he hoped that liberty would abide there where the reward both of commanding and of serving was so great; or he thought that the state could be brought back to its former condition, although the customs of the early time had disappeared; and that there would be a just enforcement of civil right, and proper observance of laws, where he had seen so many thousands of men fighting, to determine not whether they would serve, but which leader they would serve.'

See also Bizarri, *History of Genoa*, Book XIV, p. 329.

[2] Thus, many came from the free states of Greece to Salamis, on the island of Cyprus, which was the kingdom of Evagoras, as Isocrates relates [p. 199 B = *Evagoras*, xxi. 5].

[3] Dion in Philostratus, Book V, chap. xi [*Life of Apollonius*, V. xxxiv]: 'I fear that the Romans subdued by long periods of tyrannical rule, would be unable now to endure a change.'

ment concerned ; for the same right and the same course of reasoning hold good in the case of an aristocracy which governs with the exclusion of the common people. What shall I say of this fact, that no republic has ever been found to be so democratic that in it there were not some persons, either very poor people or foreigners, also women and youths, who were excluded from public deliberations ?

Livy, I [xxxviii. 2]. Livy, VII [xxxi. 6]. Livy, XXVI [XXV. xxiv]. [XXXVIII. iii.] Livy, XXXII [xxxiii]. Strabo, XIV [ii. 1]. Diod. XVI [viii]. Paus., *Lac.*, [III. xxi. 6]. *Anabasis*, V [v. 3]. Book IV [i. 9]. Book V [iv. 9]. [Front., *On Colonies*.] *Histories*, I [lxxviii].

7. Some peoples, moreover, have under their sway other peoples [1] as subject to them as if they obeyed kings. Hence the question : 'Is the people of Collatia its own master ?' Thus it is said of the Campanians, after they had given themselves over to the Romans, that they had become subject to a foreign power ; of Acarnania and Amphilochia, that they were under the jurisdiction of the Aetolians ; of Peraea and Caunus, that they were under the sway of the Rhodians ; and of Pydna, that it was given by Philip to the people of Olynthus.

When the towns which had been subject to the Spartans were delivered from Spartan domination, they received the name of Eleutherolacones, 'Free Lacedaemonians'. The city Cotyora is mentioned by Xenophon as having belonged to the people of Sinope. According to Strabo, Nice, in Italy, was assigned to the people of Marseilles, and the island of Ischia to the people of Naples. So we read in Frontinus that the town Calatis was assigned to the colony of Capua, and Caudium to the colony of Beneventum, with their territories. Otho gave the Moorish states as a present to the province of Baetica ; the fact is on record in Tacitus. All these territorial adjustments must be set aside as null and void if we take the position that the right to govern is always subject to the judgement and will of those who are governed.

8. That in fact there have been kings who did not derive their power, even in a general way, from the will of the people, sacred and secular history alike bear witness. God says, addressing the people

[1] Thus the island of Salamis was under the control of the Athenians from the time of Philaeus and Eurysaces, sons of Ajax, as Plutarch in his *Solon* [x = 83 D] informs us. This Salamis Augustus took away from the Athenians, as afterward Hadrian took away Cephalenia, as Xiphilinus bears witness [Dio Cassius, LXIX. xvi].

Atarneus from ancient times belonged to the people of Chios, according to Herodotus, Book I [I. clx], and the Samians held many towns on the mainland, as Strabo informs us, Book XIV [XIV. xx = 639]. Anactorium belonged in part to the Corinthians, in part to the people of Corfu, as Thucydides writes in Book I [I. lv].

In respect to peace with the Aetolians in Livy [XXXVIII. xi] this provision is recorded : 'The Oeneadae, with their city and country, shall belong to the Acarnanians.'

Pliny relates, *Natural History*, Book V, chap. xxix. that six towns were granted by Alexander the Great to Halicarnassus. In Book XXXIII, chap. iv, the same writer says that the island of Lindus belonged to the Rhodians. You find the same thing said about Caunus in Book XXXV [XXXV. x]. Cicero also bears witness to this fact in a letter to his brother [*Letters to his Brother Quintus*, I. i. 11. § 33]. To the same Rhodians, because they had helped the Romans against Antiochus, several cities were given as a present, says Eutropius, Book III [IV. ii] : these were cities of the Carians and the Lycians, which were taken away from them again by the senate. Both incidents are of record in the *Selections* of Polybius xxxvi and xciii].

of Israel, 'If thou shalt say, I will set a king over me'; and to Samuel He said: 'Show unto them the manner of king that shall reign over them.' Hence the anointed king is said to be 'over the people', 'over the Lord's inheritance', 'over Israel'; and Solomon is said to be 'king over all Israel'. Thus David gives thanks to God because he has made his people subject to him; and Christ says, 'The kings of the Gentiles have lordship over them.' Familiar are the lines of Horace:

Deut., xvii. 14. *1 Sam.*, viii. 4 [9]. *1 Sam.*, ix. 16, x. 1, xv. 1; *2 Sam.*, v. 2. *1 Kings*, iv. 1. *Psalms*, cxliv. 2. *Luke*, xxii. 25.

> O'er their own herds the rule of fearsome kings,
> O'er kings themselves the rule of Jove abides.

[*Odes*, III. i. 5 f.]

9. Seneca thus describes three types of government: 'Sometimes it is the people that we ought to fear; sometimes, if the constitution of the state is such that most of the public business is transacted by the senate, influential men in the state are feared; and sometimes individuals, upon whom the power of the people, and over the people, has been conferred.' Such are the men of whom Plutarch says that 'they have supreme power not only in accordance with the laws but also over the laws'. In Herodotus Otanes thus characterizes sovereignty in the hands of one person: 'To do whatever one pleases, without being accountable to anyone.' Dio of Prusa defines the power of the king in similar terms: 'So to rule as not to be accountable to anyone.' Pausanias, in his *Messenia*, contrasts 'the power of a king with a power which has to assume responsibility for its acts'.

Letters, xiv [7]. *Flamin.* [*Comp. of Philop. and Titus*, iii = p. 382 D]. [III. lxxx.] [liv = p. 565.] [IV. v. 10.]

10. Aristotle says that there are some kings who are vested with the same [55] powers that in other cases the nation itself has, over itself and its possessions. Thus after the Roman emperors began to make use of a power veritably royal, it was said that to these the people had transferred all their own authority and power, even over themselves, as Theophilus explains. Hence that saying of Marcus Aurelius the philosopher: 'No one but God alone can be judge of an emperor.'

Politics, III. xiv. *Instit.*, I. ii. 6. Xiphilinus, *Life of M. Antoninus*, IV [LXXI. iii].

Of such an emperor Dio says (Book LIII): 'He is free, and master of himself and of the laws, so that he both does what he wishes and does not do what he does not wish to do.' Such in ancient times at Argos, in Greece, was the royal power of the descendants of Inachus;[1]

[xxviii.]

[1] [72] These are the Anakim mentioned in *Deuteronomy*, ii. 10. Hence also the goddess called in Greek Ongka, to whom Cadmus dedicated a temple at Thebes. The Greeks called her Pallas.

Aeschylus says [*Suppliants*, 253] that the descendants of Inachus were Pelasgians, that is 'exiles', from a Syrian word. Also those who first inhabited Lacedaemon were Pelasgians, whence the Spartans used to say that they were descendants of Abraham, as we find in the history of the Maccabees [*1 Maccabees*, xii. 21].

Now just as the kings of Argos exercised absolute power, following the practice of the Orient from which they had come, so also did the kings of Thebes, who were sprung from the Phoenicians. This is evident from the words attributed to Creon by Sophocles [*Antigone*, lines 516 ff., 681, 682] and to the Theban herald in the *Suppliants* of Euripides [lines 410, 411].

for in the Argive tragedy of the *Suppliants*, Aeschylus represents the people as thus addressing the king:

[370–373.]

> Thou art the city, thou the commonweal,
> A sovereign thou not subject to a judge;
> Upon thy throne, as on an altar raised,
> Thou rulest all things by thy single will.

[*Suppliants*, 404–407.]

11. In a far different way Theseus, himself a king, in Euripides speaks of the commonwealth of the Athenians:

> Not ruled
> By one man is our city, but 'tis free.
> The people rules, bestowing year by year
> Office on this or that in turn.

[*Theseus*, xxiv = p. 11.]

For Theseus, as Plutarch explains, was only a military leader and guardian of the laws; in other respects he was on a level with the mass of citizens.[1]

Book IV [VI. iii]. *Cleom.* [iii = p. 805 E]. *Agesil.* [i].

In the light of such instances, clearly kings who are subject to the people are not properly called kings. Thus according to Polybius, Plutarch, and Cornelius Nepos,[2] after the time of Lycurgus, and especially after the office of ephor was created, the kings of the Lacedaemonians were kings only in name, not in fact. This example was followed also by other peoples in Greece. Says Pausanias, in the part of his work relating to Corinth: 'The Argives who, from time immemorial, had been devoted to equality and liberty, reduced the royal power to the extreme limit, with the result that they left to the sons and successors of Cisus nothing of kingly power except the name.' Aristotle declares that such kingships do not constitute a distinct type of government, because in reality they only form a part in a commonwealth controlled by an aristocracy or by the people.

[II. xix.] *Greek Quest.* [291 F]. *Politics*, III. xii [III. xvi].

12. Furthermore, even in the case of peoples who are not permanently subject to kings we see examples of a kind of temporary kingship[3] which is not subject to the people. Such was the power of the Amymones among the people of Cnidus, and of the dictator among the Romans in the earliest times, when there was no appeal to the people. Hence Livy says that an edict of the dictator was complied with as a divine decree, and that there was no resource

Livy, Book II [xviii. 8]. Plutarch, *Marcel.* [xxiv = p. 312 E] Dion. Hal., V [lxx].

[1] Demophon, son of Theseus, in the *Children of Hercules*, by Euripides [lines 424–5]:

> For I rule not as do barbarian kings;
> Just my deeds are, while justly I hold sway.

[2] The words of Nepos, or of the writer, whoever it was, that wrote the *Lives of Illustrious Men*, in *Agesilaus* [chap. i]: 'That they had two kings, in name rather than in respect to governing power'; in another passage [*On the Kings*, ii]: 'Agesilaus, just as the other Spartan kings, was king in name, not in power.'

[3] Livius Salinator in his censorship put all tribes except one in the aerarian class, and thus showed that he exercised a right over the whole people [Livy, XXIX. xxxvii].

except in obedience. Cicero declares that the dictatorship was invested with royal powers. [*Philippics*, I. i. 3.]

13. The arguments which are presented on the other side [56] it is not hard to meet. For, in the first place, the assertion, that he who vests some one with authority is superior to him upon whom the authority is conferred, holds true only of a relationship the effect of which is continually dependent on the will of the constituent authority; it does not hold true of a situation brought about by an act of will, from which a compulsory relationship results, as in the case of a woman giving authority over herself to a husband, whom she must ever after obey. To the soldiers who had made him emperor and were demanding something which did not meet with his approval, the Emperor Valentinian returned this answer[1]: Sozom., *Eccles. Hist.*, XVI [VI. vi].

> Soldiers, when you chose me to be your Emperor, it was in your power to choose. But now that you have chosen me, the decision regarding that which you ask rests with me, not with you. It belongs to you, as subjects, to obey; to me, to ponder what should be done.

It is, however, not true, as is assumed, that all kings are clothed with authority by the people. This can be clearly enough understood from the illustrations given above, of the head of a house receiving strangers only under the stipulation of rendering obedience to him, and that of nations conquered in war. [I. iii. 8. 3.]

14. Another argument men take from the saying of the philosophers, that all government was established for the benefit of those who are governed, not of those who govern; from this they think it follows that, in view of the worthiness of the end they who are governed are superior to him who governs.

But it is not universally true, that all government was constituted for the benefit of the governed. For some types of governing in and of themselves have in view only the advantage of him who governs; such is the exercise of power by the master, the advantage of the slaves being only extrinsic and incidental, just as the earnings of a physician bear no relation to medicine as the art of healing. Other types of governing have in view a mutual advantage, as that of marriage. Thus some imperial governments may have been constituted for the benefit of kings, as those which have been secured through victory, and yet are not on that account to be called tyrannical, since the tyranny, at any rate as the word is now understood, connotes injustice. Some, again, may have in view as much the advantage of him who governs as of those who are governed, as when a people

[1] His words are thus reported by Theodoret, Book IV, chap. v [IV. vi]: 'It was your act, soldiers, when there was no emperor, to place in my hands the reins of this governing power. From the moment that I took them up, it became not your responsibility, but mine, to discern what the interest of the state might require.'

powerless to help itself places itself in subjection to a powerful king for its own protection.

Nevertheless I do not deny that in the case of most states the benefit of those who are governed is the primary consideration; and that this is true which Cicero said after Herodotus, and Herodotus after Hesiod, that kings received authority in order that men might enjoy justice. But it does not on that account follow, as our opponents infer, that the peoples are superior to the kings; for guardianship was instituted for the sake of the ward, and yet guardianship includes both a right and power over the ward. Furthermore there is nothing in the objection, which some may urge, that a guardian, in case he administers his trust badly, can be removed, and that, therefore, the same right ought to hold in the case of a king. In the case of a guardian, who has a superior, such procedure is obviously valid; but in the case of a government, because the series does not extend to infinity, it is absolutely necessary to stop with some person, or assembly, whose sins, because it has no judge superior to it, God takes into special consideration, as He himself bears witness. He either metes out punishment for them, if He deems punishment necessary, or tolerates them, for the chastisement or the testing of a people.

[*On Duties*, II. xii. 41.] [I. xcvi f.] [*Theogony*, 83 ff.]

Jerem. xxv. 12.

15. 'Endure,' Tacitus very well says, 'Endure the luxury or avarice of those who govern, just as you put up with unfruitfulness or too heavy rains, and other scourges of nature. There will be faults so long as there shall be men; but they are not continuous, and are offset from time to time by better things.' Marcus Aurelius said that private persons are judged by the magistrates, magistrates by the emperor, the emperor by God.[1] There is a striking passage of Gregory of Tours, in which, himself a bishop, he thus addresses the king of the Franks:

[*Histories*, IV. lxxiv.]

[*History of the Franks*, V. xix.]

> If anyone of us, O king, wishes to overstep the bounds of justice, he can be chastised by you; but if you pass beyond them, who shall chastise you? For we speak to you—if you wish, you hear; but if you do not wish to hear, who [57] shall condemn you, unless He who has declared that He is justice?

Among the dogmas of the Essenes, Porphyry relates, was this: 'The power of governing falls to the lot of no one without the special care of God.'[2] Irenaeus very aptly remarks: 'Kings, too,

[*On Abstaining*, IV. xiii.] Book V [*Against*

[1] Xiphilinus [Dio Cassius, LXXI. iii; Marcus Aurelius is quoted]: 'In regard to those who exercise the supreme power, only deity can judge.' Vitiges, the king, in Cassiodorus [*Variae*, X. xxxi] says: 'The case of royal power is to be referred to the celestial courts, since this power was sought from heaven, and to heaven alone is indebted for its innocence.' In the same writer [VI. iv] the king says: 'We cannot be made subject to others because we have not judges.'

[2] Homer [*Iliad*, II. 197]:

> From Jupiter the highest honour springs

Diodorus Siculus, Book I [I. xc], speaking of the Egyptians: 'They think, in fact, that it is not without

receive authority at the bidding of Him at whose bidding men are born; and they are fitted to rule over those who in their time are ruled by them.' The same thought appears in the *Constitutions* called Clementine: 'You will fear the king, knowing that he was chosen by the Lord.'

Heresies, V. xxiv. 3].

Book VII. xvii.

16. What we have said is in no degree invalidated by the fact that we sometimes read of people being punished on account of the sins of their kings. This happens not because the people did not punish their king, or did not restrain him, but because it connived with him in his offences, at least through silence. And yet God, even without the people, could make use of the supreme power and authority, which He has over the life and death of individuals, for the chastisement of the king, for whom it is punishment to be deprived of his subjects.

1 Kings, iv. 16 [xiv. 16]; *2 Kings*, x. 17 [xvii. 7].

IX.—*The argument that there is always a relation of mutual dependence between king and people, is refuted*

1. Some imagine that between king and people there is a relation of mutual dependence, so that the whole people ought to obey the king who governs well, while the king who governs badly should be made subject to the people. If they who hold this opinion should say that anything which is manifestly wrong should not be done because the king commanded it, they would be saying what is true and is acknowledged among all good men; but such a refusal implies no curtailing of power or any right to exercise authority. If it had been the purpose of any people to divide the sovereign power with a king (on this point something will need to be said below), surely such limits ought to have been assigned to the power of each as could easily be discerned from a difference in places, persons, or affairs.

2. The moral goodness or badness of an action, especially in matters relating to the state, is not suited to a division into parts; such qualities frequently are obscure, and difficult to analyse. In consequence the utmost confusion would prevail in case the king on the one side, and the people on the other, under the pretext that an act is good or bad, should be trying to take cognizance of the same matter, each by virtue of its power. To introduce so complete disorder into its affairs has not, so far as I know, occurred to any people.

a kind of divine providence that kings have come to have the highest authority of all men.'

Augustine, *On the City of God*, Book V [V. xxi]: 'He who' gave imperial authority, as is clear from what precedes, 'to Vespasian, either father or son, kindliest emperors, gave it also to Domitian, the most cruel; and, not to note each case, He who gave the imperial authority to Constantine, gave it to the Apostate Julian.'

Vitiges in Cassiodorus [*Variae*, X. 31]: 'Every promotion, above all, that to the position of king, must be accounted as a gift of divinity.' There was a saying of the Emperor Titus [Aurelius Victor, *Epitome*, x. 10]: 'Powers are conferred by Fate.'

X.—*Cautions are offered for the right understanding of the true opinion: the first is, in regard to the distinguishing of similar words which differ in meaning*

1. Now that the false views have been eliminated, it remains to offer some cautions which may serve to point out to us the road leading to a right decision of the question to whom, in each nation, the sovereign power belongs.

The first caution is, not to allow ourselves to be led astray by the equivocal meanings of words, or by the external appearance of things. For instance, in Latin writers the words *principatus*, 'chief authority', 'principate', and *regnum*, 'kingly power', 'monarchy', are ordinarily [*Gallic War*, VII. iv.] used in contrast, as when Caesar says that the father of Vercingetorix had obtained the chief authority of Gaul but was put to death because [*Annals*, II. lvii.] he aspired to the kingship. Similarly, Piso, in Tacitus, says that Germanicus is son of him who holds the principate among the Romans, [*Caligula*, xxii.] not of a king of the Parthians; and Suetonius declares that Caligula came very near transforming the semblance of a principate into a [II. cviii.] monarchy. Also in Velleius it is said that Maroboduus aimed to acquire not the chief authority, which rests on the will of those who render obedience, but royal power.

2. We see, nevertheless, that these two words are often confounded. For the Spartan chiefs, descendants of Hercules, after they were made subordinate to the ephors, continued to be called kings, as we just now observed. In ancient Germany there were kings of [*Germany*, xi.] whom Tacitus says that they exercised authority through persuasion, I [vii. 8]. not through the power to command. Of King Evander Livy says that he ruled more by personal influence than by sovereign power. [*Politics*, II. xi.] Aristotle and Polybius called the suffete of the Carthaginians king, as [VI. li.] Diodorus also does; in like manner Solinus[1] said that Hanno [58] XV. lxx [XV. xv]. was king of the Carthaginians. Of the people of Scepsis in the Troad [lvi. 12.] Strabo says that after they had taken the Milesians into their state Book XIII [i. 52]. and had formed a democratic commonwealth, the royal title, and some degree of distinction also, remained to the descendants of the ancient kings.

3. On the other hand, when the Roman emperors had come to hold absolutely unrestricted powers of government, openly and without subterfuge, they were nevertheless called 'men holding the chief authority' (*principes*). In some free states, also, emblems of royal

[1] Thus the author of the *Life of Hannibal* [Cornelius Nepos, *Hannibal*, vii]: 'Just as at Rome consuls, so at Carthage two kings were chosen annually, to serve a year.'

[73] To those who are not properly called kings may be added also sons to whom the name of king has been given by royal fathers while still retaining the royal power. Such a king was that Darius whom, after judgement had been passed on him, his father Artaxerxes ordered put to death. Plutarch, *Artaxerxes* [xxix = 1026 C].

dignity are customarily granted to those in whose hands the chief authority rests.

4. Again, the assembly of the estates, that is, the meeting of those who represent the people as divided into classes—those, of course, of whom Gunther speaks : [*Ligurinus*, VIII. 577.]

The clergy, the nobility, and delegates of towns—

in some states at any rate serves only this purpose, that they form a greater king's council ; through it the complaints of the people, which are often passed over without mention in the king's cabinet, reach the ear of the king, who is then free to determine what seems to him best to meet the case. In other states such bodies have the right to pass in review the acts of the ruler, and even to enact laws by which the ruler is bound.

5. Many think that the distinction between sovereign power, and power that is less than sovereign, ought to be made according to the mode of conferring such power, whether by election or by succession. They maintain that that alone is sovereign power which is conferred by succession, that that is not sovereign power which is conferred by election. But surely this cannot be universally true. For succession is not a title of power, which gives character to the power, but a continuation of a power previously existing. The legal right to govern which was founded by selection in a family is continued by succession ; in consequence, succession confers only so much power as was granted by the first act of choice.

Among the Spartans the kingship passed to heirs, even after the office of ephor was created. To such a kingship, that is to such a holding of authority, Aristotle makes reference : 'Some kingships are conferred by right of descent, others by choice.' Such in the heroic age were most kingships in Greece,[1] as both this author and Thucydides observe. Among the Romans, on the contrary, the sovereign power continued to be conferred by election, even after all power had been taken away from the senate and the people. *Politics*, III. xiv. Book I [xiii].

XI.—*The second caution, as to distinguishing rights from the manner of possessing rights*

1. The second caution shall be this, that the distinction must be kept in mind between a thing and the mode of its possession.[2] This distinction holds not only for corporeal but also for incorporeal things. Just as a field is a thing, so rights of way over it for pedestrians,

[1] ~~This was no~~ted also by Dionysius of Halicarnassus, Book II [II. xii] and Book V [V. lxxiv].

[2] One who has leisure may consult Charles Dumoulin, *Ad Consuetudines Parisienses*, title I. § ii, gl. 4, nos. 16, 17.

for cattle, and for use as a road are also things. These three rights, however, are held by some with full ownership, by others as usufruct, by others still with power of temporary use. Similarly, the Roman dictator held the sovereign power by a right limited in time[1]; but most kings, both those who are the first to be chosen and those who succeed them in lawful succession, hold it as a usufruct. Some kings, however, possess the sovereign power in full right of ownership, having acquired it in lawful war, or through the submission of a people which, to avoid greater disaster, subjected itself without any reservation.

2. I am unable to agree with those who declare that the dictator was not the bearer of sovereignty because his power was not perpetual. For the character of immaterial things is recognized from their effects, and legal powers which have the same effects ought to be designated by the same name. Now the dictator during his period of office performed all acts by virtue of the same legal right[2] which a king has who possesses absolute power; and his acts could not be rendered null and void by any one. Duration, moreover, does not change the nature of a thing.

If, as we may grant, question is raised as to the prestige which is commonly called majesty, there is no doubt that this is to be found in fuller measure in him to whom the perpetual right has been given than in him upon whom a temporary right has been conferred; the manner of holding does effect prestige. [59] I maintain, further, that the same holds true of him who is made regent of a kingdom before a king has attained to his majority, or while the king is prevented from reigning by madness or captivity. Under such conditions regents are not subject to the people, and their power is not revocable before a time fixed by law.

3. We must consider as altogether different the case of those who received a power revocable at any moment, that is resting on sufferance. Such the kingship of the Vandals in Africa once was, and that of the Goths in Spain,[3] where the people deposed their kings whenever these failed to please them.[4] Single acts of such rulers can be annulled by those who conferred upon them their power

Procopius, *Vandalic War*, I [ix]. Aimoin, II. xx; IV. xxxv.

[1] An example of an emperor chosen for a limited time you will find in Gregoras at the beginning of Book IV [Gregoras Nicephorus, *History*, iv. i].

[2] To such a degree did this hold true that the people, when it wished to save Fabius Rutilianus, made supplications on his behalf to the dictator [Livy, VIII. xxix-xxxv].

[3] There is a trace of the ancient custom among the Behetrians. See Mariana, Book XVI [XVI. xvii].

[4] This was related of the Herulians by Procopius, *Gothic War*, Book II [II. xiv, xv]; of the Langobards by Paul Warnefrid [Paulus Diaconus], Books IV and VI; of the Burgundians by Ammianus Marcellinus, Book XXVIII [v. 14]; of the Moldavians by Laonicus Chalcocondylas [II]; of the king of Agade, in Africa, by John Leo, Book VII. Of the Norwegians William of Newburgh [*History of England*, III. vi] says that he who had killed the king became king over them; similar statements about the Quadi and the Iazyges you find in the *Selections* from Dio [lviii].

subject to revocation; and as the effect is not the same, so the right is not the same.

XII.—*It is shown that in some cases the sovereign power is held absolutely, that is with right of transfer*

1. What I have said, that in some cases sovereign power is held with full proprietary right, that is in patrimony, some learned men oppose, using the argument that free men cannot be treated as property. But just as the power of the master is one thing, that of the king another, so also personal liberty is different from civil liberty, the liberty of individuals from the liberty of men in the aggregate. The Stoics said that one form of slavery was 'subjection', and in the Holy Scriptures subjects are called servants of the king. Just as personal liberty, then, excludes subjection to a master, so civil liberty excludes subjection to a king and any other form of control properly so called.

Hotman, *Cont. Ill.*, qu. 1.

Diog. Laert. [VII. cxxii]. *1 Sam.*, xxii. 18 [17]; *2 Sam.*, x. 2. *1 Kings*, ix. 22.

Livy contrasts the two points of view thus: 'Not having yet tasted the sweetness of liberty, they were demanding a king.' The same writer elsewhere says: 'It seemed a pity that the Roman people, so long as it was in subjection under kings, was not beset by war and by enemies, and that the same people, when it had become free, was besieged by the Etruscans.' In still another passage Livy remarks: 'The Roman people was not under the power of a king, but was free.' Elsewhere, again, he contrasts nations which were in a condition of liberty with those that lived under the rule of kings.[1]

Book I [xvii. 3]. Book II [xii. 2]. [II. xv. 3.] Book XLV [xviii].

Cicero had said: 'Either the kings ought not to have been driven out, or liberty ought to have been given to the people in fact, not in words.' After the time of both Cicero and Livy Tacitus said: 'At the beginning the city of Rome was in the power of kings; Lucius Brutus established liberty and the consulship.' And in another place he declares: 'The liberty of the Germans is a keener foe than the absolutism of Arsaces.' Arrian in his account of the peoples of India refers to 'kings and free states'. Caecina in Seneca says: 'There are royal thunderbolts, whose force smites either the spot where elective assemblies meet or the governmental headquarters of a free city; the prognostication of such thunderbolts is that the state is threatened by the rule of a king.'[2]

On Laws, III [x. 25].

Annals, I [i].

On the Customs of the Germans [xxxvii]. [*Indica*, xi. 9.] [*Natural Questions*, II. xlix.]

[1] Thucydides [II. xxix]: 'This Teres, the father of Sitalces, was the first to increase the dominion of the Odryses, so that it extended over other kings of Thrace; for there is also a part of the Thracians that remains independent.'

Seneca the father in the first *Suasoria* [v]: 'In a free city one's opinion is not to be spoken in the same way as under the rule of kings.' Josephus, *Antiquities of the Jews*, Book XIII [XIII. ix. 2]: 'to kings and free peoples.' Cicero, *Letters*, XV. iv [XV. iv. 3]: 'the auxiliary forces furnished by the free peoples and allied kings.'

Pliny, Book VI, chap. xx [*Natural History*, VI. xx. 74], speaking of the people of India: 'These inhabitants of the mountains who hold the seashore in a continuous tract, free and without kings.'

[2] For an example of such a portent see Bizarri, *History of Genoa*, Book XIX [p. 450].

Book XII [iii. 14].

[*Digest*, XLIX. xv. 19.]

Livy, XXXVIII [xi. 9]. Livy, V [I. xxxviii. 2].

With similar underlying thought those of the Cilicians who were not subject to kings were called Free Cilicians. Of Amisus Strabo says that it was at times free, at times under the rule of kings. In various places in the Roman laws relating to war and to proceedings of recovery foreigners are distinguished as under kings or belonging to free peoples. Here, then, the liberty of a people is concerned, not that of individuals. Moreover, just as in the case of private servitude, so also in the case of peoples in subjection, some are said to be not their own masters, not under their own control. Hence these forms of expression : ‘ What cities, what territories, what men once belonged to the Aetolians ’ ; and ‘ Is the people of Collatia its own master ? ’

2. Nevertheless, when a people is transferred this is not, strictly speaking, a transfer of the individuals but of the perpetual right of governing them in their totality as a people. Similarly, when a freedman is allotted to one of the children of a patron, this is not a transfer of ownership of a free man but the transfer of a right which is valid over the man.

Digest, XXXVI. i. 19 (18). 1.

3. Equally devoid of foundation is the assertion that if a king has acquired any peoples in war, since he has not acquired them without blood and sweat of his citizens, they ought in consequence to be considered as acquired for the citizens rather than for the king. For it might happen that a king had supported an army from his private means,[1] or even from the income of the estate which came to him as holding the position of chief authority.[2] For a king may have over such an estate only the right of usufruct, in the same way that [60] he holds the right of ruling over the people who chose him ; nevertheless the income is absolutely his own. The case is like that in the civil law, when the restitution of an inheritance has been ordered ; the income is not restored, because the income is considered not as forming a part of the inheritance but as a part, rather, of the property.

Book VIII [v. 1].

1 Kings, xii [ix. 11].

It can happen, then, that a king may have the sovereign power in his own right [3] over certain peoples ; in such cases, then, he can transfer it. Strabo says that the island of Cythera, lying over against Cape Matapan, belonged to Eurycles, a leading man among the Lacedaemonians, ‘ in his individual right.’ Thus King Solomon

[1] Marcus Aurelius, having drained the public treasury in the war with the Marcomanni, and wishing not to impose a new tax on the people, made an auction in Trajan's Forum and thus disposed of vessels of gold, crystal and murrine cups, silken and gold-broidered garments of his wife as well as of himself, and many ornaments of precious stones. [Capitolinus, *Marcus Antoninus the Philosopher*, xvii. 4].

[2] On such grounds Ferdinand claimed for himself a half of the kingdom of Granada, as acquired from the revenues of Castile for the period of his marriage. This is set forth by Mariana, *History of Spain*, Book XXVIII [XXVIII. xiii].

[3] They who went with Baldwin to the East to wage war made the concession that there should be granted to him a half of the cities, provinces, taxes, and things taken in war.

gave to Hiram, king of the Phoenicians (Hiromos in Greek, for so he is named by Philo of Byblos, who translated the history of Sanchoniathon), twenty cities. These cities were not among those which belonged to the Jewish people; for Cabul—such is the name given to them—lay outside the Jewish territory (*Joshua*, xix. 27). They were a portion of the cities which conquered peoples, enemies of the Jews, had held up to that time; part of them had been conquered by the king of Egypt, Solomon's father-in-law, and given to Solomon as dowry, part had been vanquished by Solomon himself. That they were not at that time inhabited by Israelites is indicated by the fact that Solomon began to colonize them with Jews only after Hiram had given them back to him.

1 Kings, ix. 6, 12 [ix. 13]. *1 Chron.*, viii. 14 [*2 Chron.*, viii. 2].

4. In like manner we read that the sovereignty over Sparta, which had been captured in war, was given by Hercules[1] to Tyndareus subject to the condition that if Hercules should leave any children, it should revert to them. Amphipolis was given as dowry to Acamas, the son of Theseus. In Homer, too, Agamemnon promises that he will give seven cities to Achilles. The King Anaxagoras presented two thirds of his kingdom to Melampus.[2] Of Darius Justin speaks as follows: 'By will he left his kingdom to Artaxerxes; to Cyrus, the cities of which Cyrus was governor.' Similarly, we are to believe, the successors of Alexander,[3] each for his own part, succeeded to the full and proprietary right to rule the peoples which had been subject to the Persians, or themselves acquired sovereignty by right of victory; it is not, therefore, to be wondered at if they assumed to themselves the right of transfer.

Diod., IV [xxxiii].

[*Iliad*, IX. 149.]

Book V [xi].

[1] [74] The same Hercules, having conquered the Dryopes, who lived near Parnassus, presented them to Apollo, as Servius says *On the Aeneid*, Book IV [line 146]. Aegimus, king of the Dorians, took Hercules as an ally in the war against the Lapithae, giving him a part of his kingdom as the price of the alliance [Apollodorus, *Library*, II. vii. 7].

Cychreus, king of Salamis, having no children left his kingdom by will to Teucer. From Eurytion, king of Phthia, Peleus received a third part of his kingdom as dowry [Apollodorus, *op. cit.*, III. xii. 1]. These instances Apollodorus has. In Livy, we find in Book I [I. iii]: 'Proca bequeathed the kingdom to Numitor.'

[2] See Servius, *On Eclogues*, VI [line 48].

So in Homer, Iobates gives his daughter to Bellerophon [*Iliad*, VI. 193]:

And half the kingly honours to him gave.

This is explained by Servius on Virgil [*Aeneid*, V, line 118]: 'gave to him his daughter in marriage with a part of the kingdom.'

Of Peleus Phoenix says [*Iliad*, IX. 483 f.]:

And many peoples did he give to me
That I the part of Phthia might possess
Which holds the kingdom of the Dolopes.

Lanassa, being wedded to Pyrrhus, king of Epirus, brought to him as dower the city of Corcyra [modern Corfu], which had been captured by her father Agathocles in war; Plutarch, *Pyrrhus* [chap. ix = 387 F].

[3] Ammianus Marcellinus, speaking of Persia in Book XXII [XXIII. vi. 7], not quite in accord with the truth of history says that by will all the nation was transferred to the power of a single successor.

5. In like manner when King Attalus,[1] son of Eumenes, had by will made the Roman people heir to his property, the Roman people under the designation 'property' included also his kingdom. In regard to this procedure Florus remarks: 'After taking possession of this inheritance, the Roman people held it as a province, not by right of war or of arms but—as is fairer—by testamentary disposition.' Afterward, again, when Nicomedes,[2] king of Bithynia, dying, had made the Roman people his heir, his kingdom was reduced to the form of a province. To this Cicero refers, in his second speech Against *Rullus*: 'We have entered upon an inheritance, the kingdom of Bithynia.' Similarly a part of north-eastern Africa, the Cyrenaica,[3] was left by Apion the king to the same people by will.

Florus, Book II [xx]. *Epitome of Livy*, lviii.

[II. xv. 40.]

6. Tacitus, in the fourteenth book of his *Annals*, makes mention of the domains which had once belonged to King Apion[4] and had

[XIV. xviii.] *Epitome of Livy*, xliii.

[1] Valerius Maximus [V. ii. *Externa* 3]: 'Attalus by the fair terms of a will in gratitude bequeathed Asia to the Roman people.' On that matter Sertorius in Plutarch [*Sertorius*, xxiii = 580 E]: 'Since the Roman people with the most perfect right held that country.'

[2] See Appian, *Mithridatic Wars* [i. 7], and *Civil Wars*, Book I [I. xiii. 111].

[3] In this country were the cities Berenice, Ptolemais, and Cyrene; Eutropius, Book VI [VI. xi].

[4] Appian, *Mithridatic Wars* [xvii. 121]: 'Apion, a bastard of the family of the Lagidae, left Cyrene by will.' Ammianus Marcellinus, Book XXII [XXII. xvi. 24]: 'We acquired arid Libya by the last will of Apion the king; Cyrene with the other states of Libya Pentapolis we took over through the generosity of Ptolemy.' The king of Cyrene was in fact called both Apion and Ptolemy; see the *Epitome of Livy*, Book LXX. This same Apion had received the kingdom of Cyrene by the will of his father, according to Justin, Book XXXIX [XXXIX. v. 2]. Of another Appion, referred to by Ammianus, who had left arid Libya to the Roman people, mention is made in the *Chronicle* of Eusebius, under the year 1952.

Add also that which Procopius relates in *Buildings* [*On the Buildings of Justinian*, III. i], that, by the will of Arsaces the king, Armenia was so divided that the larger part went to his son Arsaces, the smaller part to Tigranes. From Josephus, *Antiquities of the Jews*, Books XV and XVI, we learn that Herod, after Augustus granted to him permission to leave his kingdom to whomever of his children he might choose, changed his will several times.

This custom the Goths and Vandals also had, in respect to those countries which they held by right of arms. The Vandal Gizeric disposed of Spain by will; so Procopius, *Vandalic War*, I [*History of the Wars*, III. vii. 29]. Theoderic gave Lilybaeum, in Sicily, as dowry for his sister Amalfrida, *id.* [III. viii. 13].

Among other nations the same practice was in vogue. Aquitaine, which Pippin had acquired in war, he divided among his children, [75] as Fredegarius, at the end of his *Chronicle*, bears witness. In regard to the leaving of Burgundy by will see Aymoinus [Aimoin, *History of the Franks*], III. lxviii and lxxv. The king of Fez left Fez by will to his second son, as we learn from Leo of Africa [*Description of Africa*], Book III; in regard to Bougie, see the same author, Book V.

The Sultan Aladdin bequeathed a large number of states to Osman; see Leunclavius, *Turkish History*, Book II. The king of Kermian gave to his daughter, who was about to marry Bayezid [Bayezid I], the cities of Phrygia; see the same Leunclavius, Book V. The kingdom of the Turks in Cappadocia Musa divided up among his children; see Nicetas [*Manuel Comnenus*], Book III [III. v]. The cities near the Black Sea were granted to Murad by Chuscin Bey; Leunclavius, Book I. Bayezid gave to Stephan the cities of Serbia in honour of his wife, who was a sister of Stephan; *id.*, Book VI. The Sultan Mohammed left his kingdom by will to Murad; *id.*, Book XII. Jacob Bey, ruler of Kermian, made the Sultan Murad heir of his dominion; *id.*, Book XIV. Mohammed the Turk [Mohammed I] had thought of leaving the sovereignty to his two sons, that of Europe to Amurad, that of Asia to Mustafa; the fact is recorded by Chalcocondylas, Book IV. The Emperor Basil Porphyrogenitus was made heir by David Curopalates to that region which David held in Iberia: this is related by Zonaras [XVII. vii].

I come to the Christian conquerors in the East. Michael Despota divided Thessaly among his children; this on the authority of Gregoras, Book IV [IV. ix]. The prince of Aetolia left Athens to the Venetians, and sold Boeotia to Antony; Chalcocondylas, Book IV. Messene, Ithome, and the maritime part of Arcadia were given by the prince of Arcadia as dowry to his daughter, when she was married to Thomas, son of the Greek Emperor; *id.*, Book V. Acarnania was divided by the will of

been left to the Roman people with his kingship. ‘Who does not know’, says Cicero in his speech *On the Agrarian Law*, ‘that the kingdom of Egypt, by the will of the Alexandrian king, has been made a possession of the Roman people?’ Justin represents Mithridates as saying in a speech about Paphlagonia that ‘this country had come into the possession of his father not by force, not by arms, but by the acceptance of a will’. Of Orodes, king of the Parthians, the same author relates that for a long time he was in doubt which of his sons he should designate to succeed him as king. Polemon, ruler of the Tibareni and of the adjacent country, made his wife heiress of his sovereignty; the same thing had previously been done by Mausolus, in Caria, although he left brothers surviving him.

[II. xvi. 41.] XXXVIII [v. 4]. XLII [iv. 14]. Strabo, XII [iii. 29]. Strabo, XIII [ii. 17].

XIII.—*It is shown that in some cases the sovereign authority is not held absolutely*

1. In the case of kingships which have been conferred by the will of the people the presumption is, I grant, that it was not the will of the people to permit the king to alienate the sovereign power.[1] Wherefore we have no reason to criticize Krantz because [61] in the case of Unguin, who had bequeathed Norway by will, he comments on such procedure as lacking precedent, if we assume that he had in mind the customs of the Germans, among whom the sovereign power is held with no such right. Charlemagne, Louis the Pious, and other kings after them, even among the Vandals and the Hungarians, did, as we read, dispose of their kingdoms by will; but such action had rather the character of a recommendation to the people than of a transfer in the true sense.[2] Of Charlemagne in particular Ado relates that he wished to have his will confirmed by the Frankish nobles. We read of a similar instance in Livy. Philip, king of Mace-

Danish History, II. iv. Book I [XL. lvi].

Prince Charles among his illegitimate sons, and parts of Aetolia were given to blood-relations; this on the authority of Chalcocondylas whom I mentioned [Book V].

In like manner also the kingdoms of Jerusalem and Cyprus were in part bequeathed by will, in part conveyed by contracts; in regard to the transfer of Cyprus, see Bembo, *Italian History* [*History of Venice*], Book VII, and Paruta [*History of Venice*], Book I. The Genoese received as a gift the town of Castro in Sardinia, and other places, which were subject to Cagliari; Bizarri, *On the Pisan War*, Book II. Robert [Robert Guiscard] gave Durazzo and Avlona to his younger son Bohemund; Anna Comnena, [*Alexiad*,] Book V [V. iii].

Alfonso of Arragon left to his bastard son Ferdinand the kingdom of Naples, as won by conquest [Mariana, *History of Spain*, Book XXII, chap. xviii]. In the same kingdom Ferdinand bequeathed certain cities to his nephew; Mariana, Book XXX [XXX. xxvii].

[1] Vopiscus, *Tacitus* [chap. vi], says that sovereignty ought not to be left to others as lands and slaves are left. Salvianus [*Against Avarice*, I. xi]: ‘He was not able to convey to the needy by will the peoples whom he ruled.’

[2] See the *Capitularies* of Charles the Bald, chap. xii, *Conventus ad Carisiacum*. To this head refer the will of Pelagius, by which he left Spain to Alfonso and Ormisind [Mariana, *History of Spain*, Book VII, chap. iii], and some facts in relation to Denmark which are noted by Saxo Grammaticus. It is not, then, to be wondered at, that some wills of rulers have been made of no effect because they were disapproved by the people, as that of Alfonso of Arragon; see Mariana, Book X [X. xv, xvi]. A similar fate befell the will of Alfonso of Leon, since he had given the preference to his daughters over his son; the same Mariana, Book XII [XII. xv].

donia, desiring to keep Perseus from the throne and to make Antigonus, his brother's son, king in place of Perseus, visited the cities of Macedonia in order to recommend Antigonus to the leading men.[1]

2. When we read that Louis the Pious gave back the city of Rome to Pope Paschal, this act has no bearing on the case. The Franks, having received from the Roman people the sovereignty over the city of Rome, could rightly restore it to the same people; and he who was at the head of the highest order was representative, as it were, of this people.

XIV.—*It is shown that in some cases intermediate governmental authority is held absolutely, that is with right of transfer*

Up to this point we have tried to show that the sovereignty must in itself be distinguished from the absolute possession of it. So true is this distinction that in the majority of cases the sovereignty is not held absolutely. Furthermore, in many cases intermediate governmental powers are held absolutely. In consequence, marquisates and earldoms are wont to be sold[2] and bequeathed by will more easily than kingdoms.

XV.—*The distinction stated is reinforced from the difference in mode of appointing regents in kingdoms*

1. Another proof of this distinction appears in the method of safeguarding royal power[3] when the king is prevented by age or by disease from performing his functions.

In the case of monarchies which are not patrimonial, the regency passes into the hands of those to whom it is entrusted by public law, or, that failing, by the consent of the people.[4] In the case of patrimonial monarchies, the regency goes to those whom the father or near relatives have chosen.[5] Thus we see that in the case of the kingship of the Epirotes, which had its origin in the consent of the people, guardians were appointed by the people for the king Aribas, who was a minor[6]; and guardians were appointed by the

Justin, XIII [ii. 4].

[1] See the similar case in Cassiodorus, Book VIII, letter viii [VIII. iii ff.]. So the agreements of Sanchez and James of Arragon in regard to reciprocal succession were confirmed by the nobles; Mariana, Book XII [XII. xvi]. The will of Henry of Navarre, by which [70] he made John his heir, was likewise confirmed; the same Mariana, Book XIII [XIII. xxii]; similarly, the will of Isabella, queen of Castile; *id.*, Book XXVIII [xi, xii].

[2] For the Principality of Urgel see Mariana, Book XII, chap. xvi.

[3] See Cothmann, vol. I, cons. xli, no. 11.

[4] See Mariana [Book VIII, chap. x] in regard to Alfonso V, king of Leon. But the will of King John in regard to the regency and administration of the kingdom was disapproved by the nobles; Mariana, Book XVIII [XVIII. xv].

[5] Ptolemy, king of Egypt, left the Roman people as guardian for his son; Valerius Maximus, Book VI, chap. vi, 1.

[6] [The remainder of this sentence is repeated in a note in the 1646 edition.]

nobles of Macedonia for the posthumous son of Alexander the Great. But in Asia Minor, which had been conquered by war, the king Eumenes assigned his brother as guardian for his son Attalus. In like manner the father Hiero, reigning in Sicily, by will designated those whom he wished as guardians for his son Hieronymus.

Justin, LXVII [xvii. 3]. Plut., *On the Love of Brothers* [489 F].

2. Whether the king be, at the same time, owner of the domain in his own right as proprietor, as the king of Egypt was after the time of Joseph, and the Indian kings [1] according to Diodorus and Strabo, or not, such ownership lies outside the realm of sovereignty and in its essence has no relation to sovereignty. Wherefore it does not constitute a separate type of sovereignty, or a different mode of possessing sovereign power.

Book II [xl]. Book XV [i. 40].

XVI.—*It is shown that sovereignty is not limited even by a promise of that which lies outside the sphere of the law of nature or of divine law*

1. A third comment is, that sovereignty does not cease to be such even if he who is going to exercise it makes promises—even promises touching matters of government—to his subjects or to God.[2] I am not now speaking of the observance of the law of nature and of divine law, or of the law of nations; observance of these is binding upon all kings, even though they have made no promise. I am speaking of certain rules, to which kings would not be bound without a promise.

That what I say is true becomes clear from the similarity of the case under consideration to that of the head of a household. If the head of a household promises that he will do for it something which affects the government of it, he will not on that account cease to have full authority over his household, so far as matters of the household are concerned. A husband, furthermore, is not deprived of the power conferred on him by marriage because he has promised something to his wife.

2. Nevertheless it must be admitted that when such a promise is made, the sovereign power is in a way limited, [62] whether the obligation affects only the exercise of the power, or even the power itself directly. In the former case an act performed contrary to the promise will be unjust, for the reason that, as we shall show elsewhere, a true promise confers a legal right upon the promisee; in the latter

[1] Diodorus Siculus, Book II [*History*, II. xl].

[2] Trajan devoted his head and his right hand to the wrath of the gods, in case he should knowingly have sworn falsely; Pliny, *Panegyric* [lxiv. 3]. The Emperor Hadrian swore that he would never punish a senator excepting in accordance with a decree of the senate [Spartianus, *Hadrian*, vii]. The Emperor Anastasius took oath that he would abide by the decrees of the Council of Chalcedon; the fact is recorded by Zonaras [XIV. iii], Cedrenus and others. The later Greek emperors made oath to the church; see the same Zonaras, in his account of Michael Rhangabe [*History*, XV. xxii], and elsewhere.

For an example also among the Gothic kings see Cassiodorus [*Variae*], X. xvi, xvii.

case, the act will be void on account of lack of power. From this, nevertheless, it does not follow that the promisor is subject to some superior; the nullification of the act in this case results not from the interposition of a superior power but from the law itself.

[*On Monarchy* =p. 826 F; *Them.*, xxvii= p. 125 c.] X [i. 2]. Val. Max., IX. v [Ext. 2]. [*Training of Cyrus*, VIII. v. 27.] [*Dan.*] vi. 8, 12, 15. [xxvii= p. 125 c]. [XVII. xxxiv.] [I. v.] Book III [v]. Book I [lxx].

3. Among the Persians the king possessed absolute power. 'He was an autocrat, and accountable to no one,' as Plutarch says, and he was worshipped as the image of deity. According to Justin a change of kings took place only through death. A king it was who said to the Persian nobles: 'In order that I might not seem to follow only my own counsel, I have brought you together; for the rest, remember that for you the obligation is greater to obey than to advise.' The Persian king, nevertheless, on assuming royal power took an oath, as Xenophon and Diodorus Siculus observed; and it was wrong for him to change laws[1] which had been made in accordance with a certain formality, as we learn from the story of Daniel and Plutarch's *Themistocles*. To this fact Diodorus Siculus bears witness also in his seventeenth book and, after a long interval, Procopius in the first book of the *Persian War*, where there is a remarkable story bearing on the point.[2]

Diodorus Siculus relates the same thing of the kings of the Ethiopians. According to this writer, again, the kings of the Egyptians who, as other Oriental rulers, incontestably exercised absolute power, were bound to the observance of many regulations. If they disregarded these, they could not be called to account while living; but after death proceedings were brought against them,[3] and if they were found guilty the honour of ceremonious burial was denied them. In like manner the bodies of the Jewish kings[4] who had reigned badly were buried outside the place set aside for the kings (*2 Chronicles*, xxiv. 25, and xxviii. 27). This was an excellent measure, which preserved the respect due to the supreme authority and yet, through fear of a future judgement, restrained kings from violating their pledges. We learn from Plutarch's *Life of Pyrrhus*,[5] that the kings

[1] Josephus, in his account of Vashti [*Antiquities of the Jews*, XI. vi. 2]: 'By reason of the law he could not be reconciled with Vashti.' Laws of this sort were called laws of the kingdom, as Iacchiades notes, *On Daniel*, ii. 13. For the laws of the kingdoms in Spain see Mariana, Book XX, chap. iii.

[2] The same historian nevertheless in regard to the fortress of Lethe mentions a law which was changed by the king, but he does not approve [chap. vi; the story to which reference is made is in chap. v].

[3] 'The laws enjoin that the bodies of tyrants be unburied and cast outside the borders': Appian, *Civil Wars*, Book III [II. xviii. 134]. The Emperor Andronicus deprived of burial the body of his father Michael, because Michael had begun to profess the faith of the Latin Church; Gregoras, Book VI [VI. ii].

[4] In regard to the two Jorams, one king of Jerusalem, the other king of Israel, see Josephus, Book VIII, chaps. iii and v [*Antiquities of the Jews*, IX. v. 3 and vi. 3]; also in regard to Joash, king of Jerusalem [*ibid.*, IX. viii. 4].

[5] Plutarch's words are: 'In the country of the Cassari, which forms a part of Molossia, it was customary for the kings to offer sacrifices to Jupiter Ares, and to make oath to the Epirotes. The kings took oath that they would govern in accordance with the laws; the Epirotes, that they would uphold the government of the king in accordance with the same laws' [Plutarch, *Pyrrhus*, v. 4 = 385 c].

of Epirus also were accustomed to swear that they would reign in accordance with the laws.

4. What if there should be added the condition that if the king should violate his pledge he would lose his kingship?[1] Even under such circumstances the power of the king will not cease to be supreme, but the mode of possessing it will be restricted by the condition, and it will resemble the sovereign power limited in time. Of the king of the Sabaeans Agatharchides related that he was 'accountable to no one', being possessed of the most absolute power, but that if he should go outside his palace he could be stoned. This fact was noted also by Strabo, on the authority of Artemidorus.

In Photius.

Book XVI [iv. 19].

Thus a landed estate, which is held in trust in pursuance of a request, is in fact legally ours not less than if possession were had in absolute ownership; but it is held on condition that it be not dissipated. A similar commissary clause is applicable not only in respect to the renunciation of governmental authority but also in other contracts. For we see that even some treaties of alliance between neighbouring states have been entered into with a similar stipulation.[2]

XVII.—*It is shown that sovereignty is sometimes divided into parts, subjective or potential*

1. In the fourth place it is to be observed that while sovereignty is a unity, in itself indivisible, consisting of the parts which we have enumerated above, and including the highest degree of authority, which is 'not accountable to any one'; nevertheless a division[3] is sometimes made into parts designated as 'potential' (*partes potentiales*) and 'subjective' (*partes subjectivas*). Thus, while the sovereignty of Rome was a unity, yet it often happened that one emperor administered the East, another the West, or even three emperors governed the whole empire in three divisions.

So, again, it may happen that a people, when choosing a king, may reserve to itself certain powers but may confer the others on the king absolutely. This does not take place, however, as we have already shown, when the king obligates himself by certain promises; it must be understood as taking place only in cases [63] where either the division of power,[4] of which we have spoken, is

[1] See an example given by Krantz, *History of Sweden*, Book IX [*Vandalica*, IX. xxxi].

[2] Either that the subjects should not aid the king if he should violate the agreement, or that they should not obey him; see Kromer, *History of Poland*, Books XIX and XXI. [77] There is also an instance given by Lambert von Aschaffenburg, in his account of Henry IV, year 1074.

[3] See Zasius, *Singularia Responsa*, Book II, chap. xxxi.

[4] Thus in the time of Probus the senate confirmed the laws made by the emperors, took cognizance of appeals, appointed proconsuls; and gave lieutenant-generals to the consuls [Vopiscus, *Probus*, chap. xiii].

See also Gail, *Observationes*, Book II, 157, no. 7; and Cardinal Mantica, *De Tacitis et Ambiguis Conventionibus*, Book XXVII, title v, no. 4.

explicitly provided for, or the people, yet free, enjoins upon the future king something in the nature of a perpetual command, or an additional stipulation is made from which it is understood that the king can be constrained or punished. A command is, in fact, the act of one having superior authority, at least in respect to that which is commanded. To constrain is not, at any rate not in all cases, the function of a superior—by nature every one has the right to constrain a debtor; yet the act of constraining is inconsistent with the position of an inferior. From the power of constraint, therefore, flows at least a recognition of parity, and in consequence a division of the supreme power.

2. Against such a state of divided sovereignty—having, as it were, two heads—objections in great number are urged by many. [I. iii. 8. 1.] But, as we have also said above, in matters of government there is nothing which from every point of view is quite free from disadvantages; and a legal provision is to be judged not by what this or that man considers best, but by what accords with the will of him with whom the provision originated.

An ancient example of divided sovereignty is given by Plato in [III. v.] the third book of the *Laws*. Since the Heraclids had founded Argos, Messene, and Sparta, the kings of these states were bound to govern within the provisions of the laws which had been laid down; so long as they should do so, the peoples were bound to leave the royal power in the hands of the kings themselves and their successors, and not to allow any one to take it away from them. To this end, then, not only did the peoples bind themselves to their kings, and kings to their peoples, but also the kings bound themselves to one another, and peoples to one another.[1] Further, the kings bound themselves to neighbouring peoples, and peoples to neighbouring kings, and they promised to render aid, each to the other.

XVIII.—*That nevertheless it is wrong to infer that there is a division of sovereignty when kings do not wish certain acts of theirs to have the force of law unless approved by some assembly*

Bohier, *On Decretum*, I. ii. 1.

1. They are greatly mistaken, however, who think that a division of sovereignty occurs when kings desire that certain acts of theirs do not have the force of law unless these are approved by a senate or some other assembly. For acts which are annulled in this way must be understood as annulled by the exercise of sovereignty on the part of the king himself, who has taken this way to protect himself in

[1] There are numerous examples in the history of the northern peoples. See John Magnus, *History of Sweden*, Books XV and XXIX; Krantz, *History of Sweden*, Book V; see also Pontanus, *History of Denmark*, Book VIII.

order that a measure granted under false representations might not be considered a true act of his will. A case in point was the rescript of King Antiochus the Third to the public officials, directing them not to obey him in case he should have given any order which was in conflict with the laws. Another instance is the law of Constantine that wards or widows should not be compelled to appear in person for legal proceedings at the emperor's court, even though a rescript of the emperor requiring their presence should be presented to them.[1] Plut., *Apophthegms* [183 F]. *Code*, III. xiv. 1.

2. The case under consideration, then, resembles a will to which the clause has been added that no later will would be valid; for such a clause establishes the presumption that a later will would not express the real desire of the testator. But just as in the case of such a testamentary clause, so too the analogous declaration of the king can be nullified by an explicit order and specific expression of a later act of will.

XIX.—*That other examples of wrong inference regarding the division of sovereignty are found under this head*

At this point I do not follow Polybius, who assigns the Roman republic to the class of states having a mixed government. [VI. ix ff.] In his time this state, if we fix our attention not on the civil acts but on the body of law behind the acts, was a pure democracy; for both the authority of the senate, which he considers as the control of an aristocracy, and that of the consuls, whom he likens to kings, were subject to the people.

The same statement in my view is applicable to the observations of other writers, who, dealing with matters of government, find it more to their purpose to give their attention to matters of outward form and daily administration than to the body of law which is the expression of sovereignty.

XX.—*True examples of mixed sovereignty*

1. More in point is the generalization of Aristotle, who wrote [*Politics*, III. xv.] that there are certain types of monarchy intermediate between the full royal power, which he calls absolute monarchy (this is the same as the 'complete monarchy'[2] in the *Antigone* of Sophocles; [1163.] it is called by Plutarch 'monarchy governing in its own right[3] [*On Monarchy* = p. 826 F] and not accountable to any one', and by Strabo 'authority absolute [VI. iv. 2]

[1] Add the law, *Code*, X. xii. 1.

[2] The writers of tragedy, as we noted in sec. S [8. 10], represent the Theban kingship as similar to the kingships of the Phoenicians, from whom the Theban kings traced their origin.

[3] Similarly, Dionysius of Halicarnassus, in regard to the kings of Sparta [*Roman Antiquities*, II. xiv]: 'And in fact the Spartan kings did not possess absolute power.'

in itself '), and the kingship of the Lacedaemonians, which is merely a government by leading men.

In my opinion an example of division of sovereign power may be found in the case of the Jewish kings. That in respect to most matters these kings [64] ruled with sovereign power, is, I think, beyond cavil. The people had in fact wished to have a king such as the neighbouring peoples had ; [1] but Oriental peoples were ruled in a very arbitrary
[213.] way. In the *Persians* Aeschylus represents Atossa as thus speaking of the king of the Persians :

> Not to the state responsible is he.

[*Georgics*, IV. 210 ff.] Familiar is the passage of Virgil :

> Not Egypt and great Lydia, nor tribes
> Of Parthians, or Median Hydaspes,
> To their king such homage pay.

Book XXXVI [xvii. 5]. [VII. xiv.] *Histories*, IV [xvii]. [*Germany*, xi.]

In Livy we read : ' The Syrians and the inhabitants of Asia are races born for servitude.' Not unlike this is the remark of Apollonius in Philostratus : ' The Assyrians and the Medes even worship despotism.' ' The Asiatics . . . endure despotic government contentedly,' says Aristotle, in the third book of his *Politics*, chapter fourteen. In Tacitus we find Civilis, the Batavian, saying to the Gauls : ' Syria and Asia and the Orient, accustomed to kings, might well remain in slavery ' ; [2] for in Germany and in Gaul at that time there were kings, but, as the same Tacitus observed, they held their right to rule on sufferance and by power of persuasion, not by authority to command.

[1] The people thought—to use the words of Josephus [*Antiquities of the Jews*, VI. iii. 6] : ' It was in no respect absurd, if, when their neighbours were under the rule of kings, they themselves should receive the same form of government.'

[2] Cicero, *On the Consular Provinces* [v. 10] : ' Jews and Syrians, nations born for servitude.' Euripides in the *Helena* [line 276] :

> Among barbarians all are slaves but one.

The thought was foreshadowed by Aeschylus [*Prometheus Bound*, 50] :

> For no one liveth free, save Jupiter alone.

Similar to this is the expression of Lucan [*Pharsalia*, II. 280] :

> Caesar alone in all the world
> Will now be free.

Sallust [*Histories*, V. i], in regard to the peoples of the Orient : ' So inborn in them is veneration of the name of king ' ; the passage is cited by Servius [*On the Georgics*, IV, line 211] and Philargyrius in relation to the passage in the *Georgics*.

Apollonius in regard to Damis, in Philostratus, Book VII [VII. xiv] : ' Since he is an Assyrian, and dwells on the Median border, he has no exalted ideas in respect to freedom.'

Julian, writing against the Christians [Cyril, *Against Julian*, IV] : ' Why should I speak to you in detail either of the Germans, whose hearts are devoted to freedom and impatient of the yoke ; or, on the other hand, of the Syrians and Parthians, who are easily led to endure the hand of a master, and all the barbarous peoples who live in the East and South, and many other nations that are content to live under kings who imitate the rule of masters over slaves ? '

Claudian [*On the Fourth Consulship of Honorius*, lines 306–7] :

> [78] We have not committed to you Sabaeans taught to serve,
> Nor have we made you master of the Armenian land.

2. The entire Jewish people, as we remarked above also, was under a king: and Samuel, setting forth the rights of kings, makes it plain enough that the people had no recourse against acts of injustice on the part of the king. This conclusion coincides with the interpretation which the early commentators rightly gave to the words of the Psalm: 'Against Thee only have I sinned.' On these words Jerome has the comment, 'Because he was king, and feared no one else.'[1] The same words are thus explained by Ambrose: [*Psalms*,] li. 6.

[*Defence of David*, I. x.]

He was a king, he was himself bound by no laws because kings are free from the shackles of accountability for their wrong-doings. For they are not brought by any laws to face punishment, being secure on account of the possession of supreme power.[2] David did not, therefore, sin against men, to whom he was not held accountable.

The same thing may be read in one of the *Letters* (no. 383) of Isidore of Pelusium, lately published.[3]

I see that the Jewish authorities are agreed that lashes were laid upon the king who sinned against the laws that were extant in writing in regard to the duty of kings; but in their view such blows were free from disgrace. The king, in fact, voluntarily underwent scourging as a sign of his repentance; and so he was scourged not by a particular attendant, but by some one whom he had chosen, and he himself fixed the number of stripes. The kings were so shielded from penalties of a coercive nature that in their case even the law of excalceation, which involved disgrace, was not applied. An opinion of the Jew Barnachmon is found in the sayings of the Rabbis, under the title *On Judges*: 'No creature passes judgement on the king, only God alone the Blessed.'

3. Although this is true, nevertheless I think that the judicial cognizance of some matters was taken away from the kings, and remained in the jurisdiction of the sanhedrin, composed of seventy men, which by divine command was established by Moses and lasted, with unbroken co-optation, to the time of Herod. Thus both Moses and David called the judges gods, and their judgements are called the judgements of God; the judges are further said to render judgement in place not of men but of God. *Exodus*, xxii. 8. *Psalms*, lxxxii. 1. *Deut.*, i. 17; *2 Chron.*, xix. 6, 8.

Moreover, the things of God are plainly distinguished from the things of the king, where the things of God, according to the opinion of the most learned Jews, must be understood as judgements to be rendered in accordance with the law of God. I do not deny that *1 Chron.*, xxvi. 32; *2 Chron.*, xix. 11.

[1] The same Jerome in his letter *To Rusticus On Penitence* [*Letters*, cxxii]: 'For he was a king; he feared no one else, he had no one above him.'

[2] The younger Arnobius has similar comments on the same Psalm. Vitiges in Cassiodorus [*Variae*, X. xxxi]: 'The case of royal power is to be referred to the court of heaven, since this power was sought from heaven, and to heaven alone is indebted for its innocence.'

[3] [Antwerp, 1623.]

the king of Judah on his own cognizance in certain cases passed sentences of death; in this respect Maimonides considers him as having the advantage over the king of the ten tribes of Israel. The fact is established by not a few examples, part in the Holy Scriptures, part in the writings of the Jews. On the other hand, there were certain classes of matters the cognizance of which seems not to have been entrusted to the king, as those relating to a tribe, a high priest or a prophet.[1] [65] A proof of this is in the history of the prophet Jeremiah. When the princes demanded that he be put to death, the king answered: 'Behold, he is in your hand; for the king is not he that can do anything against you,' meaning, of course, in a matter of this kind.

Jerem., xxxviii. 5.

The king, again, could not deliver from judgement a man who on any other charge had been accused before the sanhedrin. Thus Hyrcanus, being unable to hinder the passing of a sentence on Herod, evaded it by a ruse.

Josephus, *Antiquities*, XIV. xvii [XIV. ix. 4].

4. In Macedonia the kings who were descended from Caranus, as Callisthenes says in Arrian, 'obtained the right to govern the Macedonians not by force, but by law.' Curtius in his fourth book declares that 'the Macedonians were accustomed to the rule of a king, but were under the shadow of a liberty greater than that enjoyed by other nations'. In fact judgements involving sentence of death upon citizens were not in the jurisdiction of the king. The same Curtius in his sixth book says: 'In accordance with an ancient practice among the Macedonians the army took cognizance of capital crimes. In time of peace, this responsibility rested with the people. The power of the kings counted for nothing except by previous authorization.' Further evidence of this mixed sovereignty is found in another passage of Curtius: 'In accordance with a custom of their nation the Macedonians did not allow their king to go hunting on foot, and without an escort chosen from among the leading men or friends.'

[*Anab.*, IV. xi.] [IV. vii. 30.] [VI. viii. 25.] Book VIII [i. 18].

Of the Goths Tacitus says: 'They are already governed somewhat more arbitrarily than the other German nations, but not yet beyond the limit of liberty.' He had previously described a governmental headship resting upon power of persuasion, not on authority to command. Afterward he characterizes an absolute kingship in these words: 'One man issues commands; there are no restrictions, his right to rule does not rest on sufferance.' Eustathius in a comment on the sixth book of the *Odyssey*, where the state of the Phaeacians is described, says that it is 'a mixture of kingship and aristocracy'.[2]

[*Germany*, xliii.] [xi.] [xliv.] [195.]

[1] 'It cannot be that a prophet perish out of Jerusalem.' *Luke*, xiii. 33.

[2] Laonicus Chalcocondylas says that of this sort were the kingships of the Pannonians and Angles, Book II; of Arragon, Book V; and of Navarre, in the same book, where he says that magistrates were not appointed by the king, nor garrisons imposed, without the consent of the people, and that

5. A condition somewhat similar I note in the times of the Roman kings. In that period almost all matters were administered by the hand of the king. 'Romulus', says Tacitus, 'had ruled over us as he pleased.' [III. xxvi] 'The fact is established', Pomponius declares, 'that in our state at the beginning the kings had all the power.' [*Digest*, I. ii. 2, § 14.] Nevertheless even at this time Dionysius of Halicarnassus makes out that there were some matters which were reserved to the people. [IV. xx]

If, now, we concede a greater degree of reliability to the Roman writers, Seneca, basing his opinion upon the books of Cicero *On the Commonwealth*, also the pontifical books and Fenestella, averred that in certain cases there was a right of appeal from the kings to the people. [*Letters*, c [cviii. 31].] Soon Servius Tullius, who had been raised to the kingship less by right than by popular favour, lessened even more the power of the kingship; in fact, as Tacitus remarks, 'He sanctioned laws which even the kings must obey.' [*Annals*, III [xxvi].] It is, then, not surprising to find in Livy the statement that the power of the first consuls differed from the power of the kings chiefly in the fact that it was limited to one year. [II. i. 7.]

6. Similar was the mixture of democracy and aristocracy at Rome in an interregnum, and in the earlier part of the period of the consuls. In some matters—those that were of greater importance—a measure passed by the people had the force of law only if validated by the authority of the senate.[1] Later, when the power of the people had been increased, as Livy and Dionysius observe, this procedure remained only as an antiquated form, since the senators began to ratify in advance the uncertain issue of the assemblies of the people. [I. xvii. 9.] [II. xiv.] Still later a trace of the mixed sovereignty remained, as the same Livy tells; so long in fact as the power of governing was in the hands [Book VI [xxxvii. 4].]

no command was laid upon the people contrary to the customs. That some kings possessed absolute authority, while others were subject to the laws, was noted also by the Jew Ben Gerson in his comment on *1 Samuel*, viii. 4.

What Pliny writes about Taprobane, [*Natural History*] Book VI, chap. xiii [VI. xxii. 89–91], is remarkable:

> The king is chosen by the people with reference to age and mildness of disposition, and he must be without children; if afterward a child is born to him he must abdicate, that the kingship may not become hereditary. Thirty ministers are given to him by the people, and a man cannot be condemned to death except by a vote of the majority. Even under such conditions there is an appeal to the people; 70 judges are appointed. If not more than 30—for that number ought to be read here—vote to free the accused, they have no standing, they are in very deep disgrace.
>
> The dress of the king is that of father Liber [Bacchus]; the others have the costume of the Arabs. If a king does any wrong, he is punished with death; no one puts him to death, but all avoid him, refusing even to speak with him.

Servius, *On the Aeneid*, Book IV [line 682 referring to Carthage], on the words 'the people and the fathers': 'Some find here an allusion to the three parts of the body politic, the people, the optimates, and the royal power. Cato in fact says that the political organization of Carthage was composed of those three parts.'

[1] Plutarch, *Coriolanus* [xxix = 227 E]: 'The people had not the right either to enact a law or to give any order unless authorized by a previous decree of the senate.'

Chalcocondylas, Book V, notes that in his time there was a similar mixture of sovereignty in the Genoese republic.

of the patricians, that is the senate, and a means of relief lay in the hands of the tribunes, that is the people ; the means of relief was, of course, the right of veto or intercession.

[*Panathenaic Oration*, cliii = p. 265 A.]

7. In like manner Isocrates makes out that in the time of Solon the Athenian state was 'an aristocracy compounded with democracy'.

Having laid down these principles, let us discuss certain questions which frequently come up in connexion with the subject.

XXI.—*It is shown that sovereignty may be vested in him who is bound by an unequal alliance ; and objections are met*

1. The first question is, whether he can possess sovereign power who [66] is bound by an unequal alliance.

By an unequal alliance I mean here not an alliance entered into between states of unequal strength, such as that which the Theban state in the time of Pelopidas had with the king of Persia, and the Romans at one time with the Massilians, afterward with King Masinissa. Nor, again, do I have reference to a relation which has a temporary effect, as in the case of an enemy who is admitted to friendly terms until he pays the costs of a war, or fulfils some other condition. An unequal alliance is one which, by the very character of the treaty, gives to one of the contracting parties a permanent advantage over the other ; when, for example, one party is bound to preserve the sovereignty and majesty of the other, as in the treaty of the Aetolians with the Romans—that is, to put forth every effort that its sovereignty remain secure and its prestige, which is understood by the word majesty, remain unimpaired. This is what Tacitus called 'the feeling of awe for the empire', explaining what he had in mind as follows : 'In respect to place of habitation and territories they belong on their own bank, in mind and heart they act with us.' Says Florus, 'The other peoples also, who were not under our imperial authority, felt nevertheless its greatness, and stood in awe of the Roman people as conqueror of the nations.'

Justin, XLIII [v. 10]. Val. Max., VII. i [V. ii. *ext.* 4].

[*Germany*, xxix.]

Book IV [xii].

Characterized by a similar inequality are certain rights which to-day are known as rights of protection, defence, and patronage ; also, among the Greeks, the right of the mother cities over their colonies. As Thucydides says, the colonies in respect to legal independence were on the same plane as the mother cities, but they were under obligation 'to honour the mother city', and to manifest their feeling by 'the customary signs of respect'—a deferential attitude, undoubtedly, and certain outward marks of honour.

Book I [xxv, xxxviii].

2. Of the ancient treaty between the Romans, who had obtained a complete mastery over Alba, and the Latins, who were natives of

Alba, Livy says: 'In that treaty the Roman state had greatly the advantage.' Rightly did Andronicus of Rhodes, following Aristotle, say, that this is characteristic of a relation of friendship between those who are unequal, that more honour is granted to the stronger, more help to the one that is weaker.

I. iii. 4. *On Nicom. Ethics*, IX. xviii [VIII. xviii].

We know what answer Proculus gave to the question under consideration. He said that a state is independent which is not subject to the power of another, even though a stipulation may have been made in a treaty of alliance that this state shall use its good offices to maintain the dignity of another state. If, therefore, a state bound by such a treaty remains independent, if it is not subject to the power of another, the conclusion follows that it retains its sovereignty.

Digest, XLIX. xv. 7, § 1.

The same conclusion, further, must be affirmed in the case of a king. The case of an independent state and that of a king, who truly is a king, are in this matter identical. Proculus adds that the stipulation referred to is made a part of a treaty in order that 'it may be understood that one state holds a position of superiority, not that it may be understood that the other state is not independent.' This position of superiority we ought to consider as having reference not to power (for he had just said that the lesser state was not subject to the power of another), but to influence and prestige. This is brought out by an apt comparison, in the following words:

[*Digest*, XLIX. xv. 7, § 1.]

Just as we understand (says Proculus) that our clients are free men, even though they are not our equals in respect to authority, standing and legal status, so it must be understood that those also are free who are under obligation through their good offices to maintain our prestige.

[*Digest*, XLIX. xv. 7, § 1.]

3. Clients are under the protection of their patrons; so lesser states [1] are by treaty placed under the protection of a state which is superior in prestige. They are 'under protection, not under domination', as Sulla says in Appian; 'under patronage, not under subjection,' as Livy expresses it. In the second book of his treatise *On Duties* Cicero, characterizing the times when the Romans were more conscientious, says that with them their allies had protection, not domination. In harmony with this is the saying of the elder Scipio Africanus, that 'The Roman people prefers to bind men to it through kindness rather than through fear, and to have foreign

Mith. Wars [ix. 62]. Book XXXI. [II. viii. 27.] Livy, XXVI [xlix. 8].

[1] See Cardinal Toschi, *Practicae Conclusiones*, 935.

You have an example in the Dilimnites, who, being free and independent, engaged in military service under the Persians; Agathias, Book III [III. xvii]. Thus it was the design of Irene to divide the empire up among the children of her husband in such a way that she should make those who were born later 'inferior in standing, yet independent and possessing full authority'.

See Krantz, *History of Saxony*, Book X [X. iii], in regard to the cities which gave themselves over to the protection of Austria.

Herodian, Book V [VII. ii. 1]: 'Of the Osroeni and Armenians, of whom the former were subjects, the latter friends and allies.'

nations joined with it in protecting care and in alliance rather than subject to it in depressing servitude.' In harmony also is what Strabo said of the Lacedaemonians after the Romans [67] came into Greece: 'They remained free, contributing nothing except what was required by the terms of alliance.' [VIII. v. 5.]

Just as private patronage in the case of individuals does not take away individual liberty, so patronage in the case of a state does not take away independence; and independence without sovereignty is inconceivable. So in Livy you may see that the conditions 'to be under protection' and 'to be in subjection' are contrasted. According to Josephus, Augustus made the threat to Syllaeus, king of the Arabs, that if he did not refrain from injuring his neighbours, Augustus would see to it that he should become a subject instead of a friend. In the condition of subjects, in truth, the kings of Armenia were. They, as Paetus wrote to Vologeses, were under the domination of the Romans, and so were kings in name rather than in fact. Such, at an earlier time, were the kings of Cyprus and other kings who, as Diodorus says, were 'subject' to the kings of Persia. [VIII. i. end; XXXVI. xxviii. 4.] [*Antiquities*, XVI. ix. 3.] Book XVI [xlvi].

4. Contradictory, seemingly, to what we have said, is the statement which Proculus adds: 'Citizens of allied states are subject to legal proceedings among us, and if they are found guilty we punish them.' [*Digest*, XLIX. xv. 7, § 2.]

In order that this statement may be understood, it is necessary to know that there are four kinds of controversies which can arise. First, if subjects of a state or of a king who is under the protection of another are charged with having violated the treaty of alliance; in the second place, if the states or kings themselves are accused of such violation; thirdly, if allies who are under the protection of the same state or king have differences among themselves; fourthly, if subjects complain that they have suffered wrongs at the hands of those to whom they are subject.

In the first case, if the offence is evident, the king or state is bound to punish the offender, or to deliver him up to the party that suffered the wrong. This holds not only in the case of unequal alliances, but also in the case of alliances made on equal terms; also, again, in the case of those who are not bound by any alliance, as we shall show elsewhere. The king or state furthermore is bound to see to it that the losses are made good. At Rome this was the business of the board of recuperators (*recuperatores*). So Aelius Gallus, as quoted by Festus: 'There is recovery when between the Roman people and foreign kings, nations and states a law provides in what way property may be restored and recovered through the agency of the recuperator, and how men are to proceed for the adjustment of private interests between themselves.' However, one ally does not have the [II. xxi. 4.] [under the word *reciperatio*.]

right directly to seize or punish a subject of another ally. Thus the Campanian Decius Magius was placed in fetters by Hannibal and taken to Cyrene, thence deported to Alexandria; he showed that he had been placed in bonds by Hannibal in violation of the terms of alliance, and so was released from his chains. Livy, XXIII [vii–x].

5. In the second case, one ally has the right to compel the other ally to abide by the terms of the treaty, and also to punish him, in case he has failed to do so. But this, again, is not limited to unequal alliances. The same rule of right holds in the case of a treaty on equal terms. For in order to exact punishment from one who has committed an offence, it is sufficient that the party inflicting the punishment be not subject to the offender; but this point will be treated by us later. [II. xx. 3.] In consequence the same practice has arisen also between kings and states not in alliance.

6. In the third case, in unequal as in equal alliances, controversies are ordinarily referred to a conference of the allies[1] who have no interest in the matter under dispute—such, we read, was the practice among the Greeks, the early Latins, and the Germans;—otherwise, either to arbitrators, or even to the leading member of a confederation as a common arbitrator. The latter alternative is ordinarily adopted in the case of an unequal alliance, so that controversies are settled by reference to him who has the leading place in the alliance. Even this method does not disclose an authority based on sovereign power; for kings often plead before judges appointed by themselves.

7. In the last case the allies have no right of intervention. Thus when Herod on his own initiative submitted charges against his sons to Augustus, they said to him: 'You were able to punish us yourself in your own right, both as father and as king.' Josephus, XVI. vii. 8 [*Antiquities*, XVI. iv. 3]. [68] When charges were brought against Hannibal at Rome by some of the Carthaginians, Scipio[2] declared that the senators ought not to interfere in a matter which belonged to the Carthaginian state. Val. Max., IV. i. This is in harmony with the statement of Aristotle, that an alliance of states differs from a single state in this, that the allies are charged with preventing the commission of wrong against any one of them, not with prevention of wrong-doing among the citizens of an allied state. *Politics*, III. ix.

8. Another objection is often raised, that in the histories the word 'command' is sometimes used with reference to him who holds a position of vantage in an alliance, and 'obey' with reference to him who holds the inferior position. This, however, ought not

[1] Such a meeting is called a 'common court' in an ancient inscription of isopolity or treaty of reciprocal rights between the Priansians and the Hieropotamians [*Corpus Inscriptionum Graecarum*, I. 2556.58].

[2] See Polybius in *Selections on Embassies*, cv.

to disturb us. For we are here concerned either with matters that relate to the common good of the alliance, or with the particular interest of him who in the alliance holds the position of vantage. In respect to matters of common interest, except at the time of a conference of the allies, even when there is an alliance on equal terms, he who is chosen as head of the alliance—'prince of the covenant' (*Daniel*, xi. 22)—ordinarily holds the command. Thus Agamemnon commanded the Greek kings; afterward the Spartans, then the Athenians, commanded the Greeks. In the address of the Corinthians [I. cxx.] in Thucydides we read:

> It is fitting that those who have the leading place in an alliance should arrogate to themselves no privilege in relation to their own interests, but should make themselves conspicuous above the others through their careful management of the common interests.

[*Panegyric*, civ= p. 62 c.] Isocrates says that the ancient Athenians held the military leadership, 'assuming the responsibility on behalf of all the allies, but in such a way as to leave their independence unimpaired'; [lxxx= p. 56 E.] in another passage, 'in such a way that they thought their duty was to administer the command of the war, not to bear sway'; in a third [civ= p. 62 c.] passage, he adds: 'administering their affairs in the spirit of an ally, not of a master.'

This right of the leading member of an alliance the Romans expressed by *imperare*, 'to command'; the Greeks, with greater self-constraint, by a word meaning 'to put in order', 'arrange'. [I. xcvi.] Thus, according to Thucydides, the Athenians, having received the direction of the war against the Persians, 'arranged' (so it was said of those who were sent from Rome to Greece, that they were sent 'to arrange the affairs of free states'[1]) 'what cities should contribute money for the war against the barbarian, what cities should contribute ships'. If this, then, is done by one who is only the leading member in an alliance, it is not remarkable if the same thing is done by him who in an unequal alliance has, according to the terms of the treaty, the position of vantage. Understood in this sense, the right on the part of the leading ally to hold command, that is hegemony, does not take away the independence of the others.

Consistent with this point of view is the statement of the XXXVII [liv. 25]. Rhodians in their speech to the Roman senate, as reported by Livy:

> In former times the Greeks by their own strength gained also the power to rule. Now they earnestly desire that the power to rule may remain permanently where it is; they count it sufficient to maintain their independence with the help of your arms, since they are not able to maintain it with their own.

Book XV [xxviii]. In the same spirit, after the citadel of Cadmus had been retaken by the Thebans, as Diodorus relates, many states of Greece joined

[1] Pliny, *Letters*, VIII. xxiv.

together, 'to the end that they might be free, but might avail themselves of the military leadership of the Athenians.' Of the Athenians themselves in the time of Philip of Macedon Dio of Prusa says that 'at this time they had lost their position of military leadership and retained only their independence'. [*Orations*, xxi = p. 350.] Caesar soon names as allies the same peoples who, as he tells us, had been under the dominion of the Suevi. [*Gallic War*, V. xxxix.]

9. In matters which affect the particular interest of him who holds the position of vantage in an unequal alliance, requests are often spoken of as commands, not rightly but in accordance with the similarity of the effect produced; in like manner the prayers of kings are often said to be commands, and sick people are said to give orders to their physicians. Says Livy (Book XLII): 'Before the time of this consul'—Gaius Postumius—'no one was ever a burden or source of expense to the allies in any matter; so the public officials were provided with mules, tents, and all other military equipment, in order that they might not requisition such material from the allies.' [XLII. i. 8.]

10. It is, nevertheless, true that in the majority of cases he who has the position of vantage in a treaty, if he [69] is greatly superior in respect to power, gradually usurps the sovereignty properly so called. This is particularly liable to happen if the treaty is perpetual, and if it contains the right to introduce garrisons into towns, as the Athenians did, when they allowed appeals to be made to them by their allies—something that the Spartans had never done. The rule of the Athenians over the allies in those times Isocrates compares to the rule of a king. [*On Peace*, xxxvi = p. 182 D.] With similar provocation the Latins complained that under the shadow of an alliance[1] with Rome they were experiencing subjection as slaves. [Hal., VI [Livy, VIII. iv. 2].] Thus the Aetolians declared that there now remained to them only a vain appearance and empty name of liberty; [Livy, XXXIV [xxiii. 7].] the Achaeans, afterward, that 'What was, in appearance, an alliance, was already a slavery, dependent on another's will'. [XXXIX. xxxvii. 13.] According to Tacitus, Civilis the Batavian complains of the same Romans, declaring that his people 'were no longer regarded as allies, as formerly, but as bondmen'; [*Histories*, IV [xiv].] and in another passage, that 'A pitiable servitude is falsely called peace'. [IV. xvii.]

In Livy, too, Eumenes says that the allies of the Rhodians are

[1] [79] This is the very thing that Plutarch speaks of in his *Life of Aratus* [xxxviii = 1045 A], 'to make of an alliance a bondage under a mild name'; Vocula calls it 'a mild servitude' in Tacitus, *Histories*, IV [IV. lvii]. Festus Rufus [X], speaking of the Rhodians: 'At first they enjoyed liberty of action; afterward, led on by the mildness of the Romans, they gradually became accustomed to render obedience.' Those whom Caesar had previously spoken of as having a relation of friendship with the Aeduans and had called clients, in a later passage [*Gallic War*, VII. lxxv] he mentions as being under the rule of the Aeduans.

Add references, if desired, to Frederick Mindanus, *De Processibus*, Book II, chap. xiv, no. 3; Ziegler, sec. *Landsassii*, 86; Gail, *Observationes*, Book II, 54, no. 6.

See Agathias, Book I [I. ii. iii], where the Goths are warned what in the course of time they are to expect from the Franks.

XXXV [xxxi. 12] and XXXVII [liii. 4]. allies in name only, being in reality subject to the rule of another and accountable to it. The Magnesians also declared that Demetrias, though independent according to appearances, was in reality at the beck and call of the Romans.[1] Thus Polybius observes that the [IV. xiv.] people of Thessaly were in appearance independent, but in reality under the rule of Macedonia.

11. When such things happen, with the result that non-resistance on the part of the weaker passes over into the right of ruling on the part of the stronger—there will be opportunity to discuss this point elsewhere—then either those who had been allies become subjects, or there is at any rate a division of sovereignty such as, according to our previous statement, may take place.

XXII.—*That sovereignty may be held by him who pays tribute*

There are some allies who pay a definite amount,[2] either as reparation for wrong-doings, or as a contribution to secure protection; these are 'allies subject to tribute', as Thucydides calls them. [I [xix].] Such were the kings of the Jews,[3] and of the nations near them after the time of Antony, being 'under agreement to pay tribute', as Appian says. [*Civil Wars*, V. viii. 75.]

I see no reason for doubting that such nations may possess sovereignty, although the confession of weakness does detract somewhat from their standing.

XXIII.—*That sovereignty may be held by him who is bound by feudal law*

1. To many the problem of sovereignty in relation to feudal tenure seems more difficult; it can, however, be easily solved in the light of what has been said. In discussing this type of contract, which is peculiar to the Germanic nations and is found only where the Germans settled, two elements need to be considered, the personal obligation, and the property right.

2. The personal obligation is the same whether a person by feudal law possesses the actual right of governing, or anything else

[1] Such were the Lazi also in the time of Justinian. See Procopius, *Persian War*, II [II. xv. 1. 2].

[2] The Persians used to receive from Justinian a yearly grant; on this subject see Procopius, *Persian War*, II [II. x. 20-4], and *Gothic Wars*, IV [IV. xv]. This payment under a mild designation was called a contribution for protecting the Caspian Gates. The Turks appease the mountain Arabs with money.

[3] Josephus, Book XV [XV. iii. 8]: 'Antony declared that it was not right that the king be called upon to render an account in regard to those things which he had done as a king; that under such conditions he would in fact not even be a king. It was fair, he said, that those who had conferred the honour upon him should also permit him to use his authority in the freest possible way.'

Chrysostom, *On Alms*, ii: 'After the affairs of the Jews began to decline . . . and they were brought under the authority of the Romans, they neither enjoyed complete liberty as before, nor, nevertheless, were they altogether in subjection, as at present; but they were honoured with the title of allies, paying taxes to their kings and from these receiving magistrates. For the rest, in most matters they used their own laws, so that they themselves punished in accordance with the customs of the country those of their people who committed offences.'

even though situated in a different place. Now, as such an obligation would not deprive an individual of the right of personal liberty, so it does not deprive a king or a state of sovereignty, which is political freedom.

This is most clearly seen in the case of free fiefs, which are called frank-fiefs. These do not consist in any property rights but in a personal obligation only. Such fiefs are, in fact, only a kind of unequal alliance, which we have been treating; of the contracting parties one engages to render service to the other, the other in turn to furnish defence and protection. Suppose even that the service of the vassal had been promised against all men in the case of the fief now called a liege fief[1] (formerly the term had a wider application); that in no degree lessens his right of sovereign power over his subjects—not to speak of the fact that in such a promise there is always an unexpressed condition, provided the war be lawful, which is to be dealt with later.

3. So far as the property right is concerned, if one holds by feudal law, the right of governing may be lost on the extinction of a family, or even on account of certain crimes. But in the meantime the power of the vassal does not cease to be sovereign; for, as we have often said, the object is one thing, the manner of possession quite another. I see that a number of kings were placed in authority by the Romans with the stipulation that if the royal family should become extinct the political power should revert to them; this fact was remarked by Strabo, with reference to Paphlagonia and some other kingdoms. Book XII [iii. 41].

[70] XXIV.—*Distinction between the right of sovereignty and the exercise of the right, with examples*

In the case of political power not less than in that of private ownership it is necessary to distinguish between the right and its exercise, or the first act and the second. For a king who is an infant possesses political power but is unable to use it. A king, again, may be insane or a captive; and a king may be in foreign territory and live in such a way that freedom of action in respect to a dominion existing elsewhere is not permitted to him.

In all these cases it is necessary to provide guardians, or regents. And so Demetrius,[2] being in the power of Seleucus, and unable to live with sufficient freedom, forbade that reliance be placed on his seal or his letters, and desired that the administration in all respects be carried on as if he were dead.

[1] See Baldus, *On Digest*, pr.; Natta, *Consilia*, 485.
[2] See Plutarch, *Demetrius* [chap. li=914 D].

CHAPTER IV

WAR OF SUBJECTS AGAINST SUPERIORS

I.—*State of the question*

[80] 1. War may be waged by private persons against private persons, as by a traveller against a highwayman; by those who have sovereign power against those who possess like power, as by David against the King of the Ammonites; by private persons against those who have sovereign power, but not over them, as by Abraham against the King of Babylon and his neighbours; and by those who have sovereign power against private persons who are either their subjects, as in the war waged by David against the party of Ishbosheth, or are not their subjects, as in the war waged by the Romans against the pirates.

2. The question to be considered here is simply this, whether it is permissible for either private or official persons to wage war against those under whose authority they are, whether this authority be sovereign or subordinate.

First of all, the point is settled beyond controversy, that arms may be taken up against subordinates by those who are armed with the authority of the sovereign power. A pertinent case is that of Nehemiah who, authorized by an edict of Artaxerxes, waged war on the petty princes near him. Similarly the Roman emperors granted to the proprietor of an estate the privilege of driving off the surveyors who make measurements for a camp. Our question, then, is to determine what action is permissible against the sovereign power, or against subordinates acting under the authority of the sovereign power.

Code, XII. xl. 5.

3. Among all good men one principle at any rate is established beyond controversy, that if the authorities issue any order that is contrary to the law of nature or to the commandments of God, the order should not be carried out. For when the Apostles said that obedience should be rendered to God rather than men, they appealed to an infallible rule of action, which is written in the hearts of all men, and which you may find in Plato expressed in about as many words. But if from any such cause, or under other conditions as a result of caprice on the part of him who holds the sovereign power, unjust treatment be inflicted on us, we ought to endure it rather than resist by force.

[*Apology*, xvii.]

II.—*That as a general rule rebellion is not permitted by the law of nature*

1. By nature all men have the right of resisting in order to ward off injury, as we have said above. But as civil society was instituted in order to maintain public tranquillity, the state forthwith acquires over us and our possessions a greater right, to the extent necessary to accomplish this end. The state, therefore, in the interest of public peace and order, can limit that common right of resistance. That such was the purpose of the state we cannot doubt, since it could not in any other way achieve its end. If, in fact, the right of resistance should remain without restraint, there will no longer be a state, but only a non-social horde, such as that of the Cyclopes, among whom— [Homer, *Odyssey*, IX. 114 f.]

> Each bears rule
> O'er wife and offspring.
> A mob confused, where none the other heeds.[1]

Eurip., *Cyclops* [120].

Such, too, were the Aborigines, whom Sallust represents as a race of men rude, without laws, without government, free and unrestrained; and such, according to the same author in another passage, were the Getulians, who were controlled neither by custom nor by the law or rule [81] of any one. [*Catilinarian War*, VI. i; *Jugurthine War*, XVIII. i.]

2. The usage of all states is as I have stated. Augustine says: 'There is a general agreement of human society to obey kings.' Says Aeschylus: [*Confessions*, III. viii.]

> Full power the king enjoys, responsible to none.

[*Prometheus Bound*, 326.]

In the words of Sophocles:

> Rulers they are—obedience must be rendered;
> And why not?

[*Ajax*, 668.]

A kindred thought is expressed by Euripides:

> Crass blundering of them who rule
> Must be endured.

[*Phoenician Maidens*, 394.]

To these quotations may be added the words of Tacitus which we quoted above, in a similar connexion, and also the following: 'To the emperor the gods have given the supreme direction of affairs; to subjects has been left the honour of rendering obedience.' Here also belongs the verse: [*Annals*, VI. xiv.] [I. iii. 8. 15.]

> Unworthy things must worthy be esteemed,
> If the king does them.

[Plautus, *Captives*, 200 f.]

[1] Valerius [*Argonauts*, IV. 102–3] has a similar characterization of the Bebrycians:

> No bonds of law they heed,
> Nor rights that stay and calm men's minds.

[*Medea*, 194.] [*Antigone*, 666 ff.]

Here, again, a sentence from Seneca: 'The rule of a king, just and unjust, you must endure.' The thought was borrowed from Sophocles, who had said:

> You must obey him whom the state has placed
> In power, alike in small things and in things
> Unjust as well as just.

[*Jugurthine War*, XXXI. xxvi.]

A sentence of Sallust has the same purport: 'To do whatever you wish with impunity, that is to be a king.'[1]

3. Hence it comes about that everywhere the majesty, that is, the prestige, whether of the state or of him who exercises the sovereign power, is safeguarded by so many laws, so many penalties; this cannot be maintained if licence to offer resistance be free to all. If a soldier has resisted a centurion who wishes to punish him and has laid hold of the centurion's staff, he is degraded in rank; if he has purposely broken the staff, or 'has laid a hand on the centurion he is punished with death'. In Aristotle we read, 'If he who has official authority has struck any one, he is not to be struck in return.'

Digest, XLIX. xvi. 13, § 4–5, Rufus, *Leg. Mil.*, xv. [*Nicomachean Ethics*, V. v.]

III.—*That rebellion is not allowable according to Hebraic law*

Deut., xvii. 12. *Josh.*, i. 18. *I Sam.*, viii. 11.

In Hebraic law he was condemned to death who had been disobedient either to the high priest or to one that had been appointed by God out of the ordinary way as ruler of the people.

Deut., xvii. 14.

If we examine closely the passage in Samuel which deals with the right of the king, it becomes clear that on the one hand this must not be understood as setting forth a true right, that is a power to do something in a manner morally right and just (an altogether different manner of life is prescribed for the king in the part of the law which deals with the duty of the king), nor, on the other hand, is a mere fact indicated; for there is nothing in it peculiar to a king, since private persons also are wont to do wrongs to private persons. A fact is set forth, however, which has in a measure a legal effect, that is, the obligation not to offer resistance.[2] So it is added, that the people when oppressed by such wrongs should implore the help of God, because, in fact, there would be no recourse at the hands of man. That, therefore, is called a legal right in the sense that the praetor is said to 'enforce a legal right even when he gives an unjust decision'.

Dig. I. i. 11.

[1] Applicable here are the words of Mark Antony which we have already quoted above, after Josephus [p. 136, note 3].

[2] Philo, *Against Flaccus* [chap. x. i, speaking of the Jews]: 'For when were we suspected of revolt? When, in the view of all men, were we thought to be other than peacefully disposed? And the practices which we maintain in our daily life: are they not beyond reproach, are they not conducive to the harmony and well-being of the state?'

IV.—*That rebellion is even less allowable according to the law of the Gospel; proof is presented from Holy Writ*

1. In the New Covenant Christ enjoined men 'to render unto Caesar the things that are Caesar's'. By this he meant that his followers owed to sovereign powers an obedience joined, if need be, with long-suffering, not less in degree, if not even greater, than that which the Jews owed to the Jewish kings. This thought the Apostle Paul, a most excellent interpreter of Christ, develops more fully. *Rom.*, xiii [2–5]. Describing in detail the duties of subjects, among other things he says: 'He that resisteth the power, withstandeth the ordinance of God; and they that withstand shall receive to themselves judgement.' A little farther on he adds: 'For he is a minister of God to thee for good'; afterward, 'Wherefore ye must needs be in subjection, not only because of the wrath, but also for conscience' sake.'

Under subjection the Apostle includes the necessity of non-resistance—not the necessity only which arises from fear of a greater [82] evil but that which flows from our very sense of duty and lays upon us an obligation not only to men but also to God. He adds two reasons. The first is that God approved this constituted order of bearing rule and rendering obedience both in earlier time, under the Hebraic law, and now under the Gospel; in consequence, we are to look upon public authorities as if they had been established by God himself. For the acts to which we have given our authorization we make our own. The other reason is, that this constituted order contributes to our good.

2. And yet, an objector may say, there is no advantage in suffering wrongs. On this point some declare—with more of truth than of consistency with the Apostle's meaning, I judge—that even these wrongs are advantageous to us, because such long-suffering will not fail of its reward. It seems to me that the Apostle had in view the universal end which the constituted order had in view; this is, the maintenance of public tranquillity,[1] in which also that of individuals is comprised. Truly we cannot doubt that generally we do attain to this good through the agency of the powers of government; for no one wishes to bring harm upon himself, and the good fortune of the ruler consists in the good fortune of his subjects. 'May there be those whom you may rule,'[2] one of the ancients said. Among the Jews there is a proverb, 'If there were no public authority, men [*Pirke Aboth.*, iii.]

[1] Well does Chrysostom [*On Romans*, xiii. 4=Homily XXIII, ii] remark: 'He is co-worker with thee, he co-operates with thee,' the emperor, that is, with him who preaches the Gospel. He hews the surface which you smooth.

[2] This saying is ascribed to Sulla by Plutarch [cf. *Sulla*, xxxi=472], Florus [*Epitome*, II. ix. 25, or III. xxi], and others, from whom it was taken by Augustine, *On the City of God*, III. xxviii.

would swallow one another alive.' The same thought is found in Chrysostom: 'If there were no rulers of states, we should be living a life more wild than the life of wild beasts, not only biting one another, but devouring one another.'[1]

3. If sometimes under the influence of excessive fear or anger or other passions, rulers are turned aside so that they do not enter the straight road that leads to tranquillity, this after all must be reckoned among the things that less frequently happen; and such things, as

[*Histories*, IV. lxxiv.] Tacitus remarks, are offset by the interposition of better things. Laws, again, count it sufficient to have in view what generally happens,

Dig. I. iii. 6; V. iv. 3, end. Livy, XXXIV [iii. 5]. as Theophrastus remarked. A saying of Cato bears on the same point: 'There is no law which is sufficiently well adapted to all cases; this only is aimed at, that a law be serviceable to the majority, and of general application.'

Things which happen rather infrequently ought nevertheless to be brought together under general rules; for although the principle embodied in a law may in a special case not have a specific application, yet the principle remains of general scope, and it is right that particular cases should be determined accordingly. This is better than to live without a rule, or to suffer the rule to be left to every one's discretion.

On Benefits, VII. xvi [3]. Quite to the point Seneca remarks: 'It was better that even a well-grounded excuse be not accepted from a few than that any and every kind of an excuse be tried by all.'

4. At this point we may quote as pertinent those words of Pericles in Thucydides,[2] which cannot be too often brought to mind:

> For my part I think that even for the individual citizens it is more advantageous that the state prosper than that, while their private interests prosper, the state as a whole should suffer. For though a man may have his private means well invested, nevertheless if the state perish he must perish with it; but the man who, in a prosperous state, has been unfortunate, is much more likely, under such a condition, to regain his footing. Since, then, a state is able to bear the misfortunes of individuals, while the individual is not able to bear the misfortunes of a state, what reason is there why all should not unite in taking counsel for the state, and for its protection, and not do as you are doing, you who, panic stricken as it were, by private losses, are abandoning the safety of the state?

[1] The quotation is from Chrysostom, *On the Statues*, Homily VI [i], in which this also is found [ii]: [94] 'Abolish the courts of justice and you will take all tranquillity out of life.' In a later passage: 'Do not speak to me of those who have abused their official positions, but look at the beauty of the institution itself, and you will admire the wisdom of him who was the originator of it.'

The same writer *On Romans* [xiii. 5=Homily XXIII, ii]: 'If you were to do away with magistrates, all things would perish; in such case cities will not remain, not the fields, not the forum, nor anything else. All things will be turned upside down, and the weaker will become the prey of the stronger.' A similar thought is expressed by the same writer, *On Ephesians*, v [Homily XX, i].

[2] Book II [II. lx]. With this the thought of Ambrose, *On Duties*, Book III [III. iv. 25], accords: 'The interest of the individual is the same as that of the general body.' And the following in a legal statement, in *Digest*, XVII. ii. 65, § 5: 'Always not that which is to the advantage of one of the partners but that which is advantageous to the partnership is to be kept in view.'

Add the next to the last section in the *Code*, VI. li. 14.

The same thought is expressed by Livy briefly in these words : ' A state that is in a sound condition easily safeguards the interest of individuals ; in betraying the general interest you would vainly think to protect your own.' Plato had said, in the fourth book of his *Laws* : ' It is the common interest which binds a state together, that of individuals which rends it apart. Wherefore, it is more advantageous, both for the state and for the individual, that public interests be cared for in preference to [83] private interests.' XXVI [xxxvi. 9]. [xiii.]

Xenophon presents a slightly different point of view : ' He who in war acts treacherously against his general does so at the peril of his life.' The words of Iamblichus bear upon the same subject : ' The private interest is not dissociated from the public interest ; rather, the good of the individual is comprised in the general good. In states, as in the case of animals and the rest of nature, the welfare of the parts is dependent upon the welfare of the whole.' [*Anabasis*, VI. i. 29.] [In Stobaeus, xlvi. 74.]

5. Now beyond doubt the most important element in public affairs is the constituted order of bearing rule and rendering obedience, regarding which I have spoken. This truly cannot coexist with individual licence to offer resistance. The point is well set forth in a fine passage of Dio Cassius : [XLI. xxxiii.]

> For my part I think that it is not a proper thing for the ruler of a state to be overridden by his subjects, and that there is no hope of safety if the element whose function it is to obey strives to rule. Consider what kind of order there would be in a household if the elders should be scorned by the young. How would the sick recover their health if they should not obey their physicians in everything ? What safety for those who travel by ship if the crew should treat with contempt the orders of the helmsmen ? By nature in truth it is for men a necessity, and a means of safety, that some rule and others obey.

6. With Paul let us associate Peter as a companion. Peter's words are : *1 Peter*, ii. 12 [ii. 17–20].

> Honour the king.
>
> Servants, be in subjection to your masters with all fear ; not only to the good and gentle, but also to the froward. For this is acceptable, if for conscience toward God a man endureth griefs, suffering wrongfully. For what glory is it, if, when ye sin, and are buffeted for it, we shall take it patiently ? But if, when ye do well and suffer for it, ye shall take it patiently, this is acceptable with God.[1]

A little farther on Peter confirms this exposition by the example of Christ. The same thought in the *Constitutions* of Clement is expressed in these words : ' Let the servant who fears God at the same time bring goodwill to his master, no matter how ungodly, no matter how unjust.' [IV. xii.]

Two comments need to be made. First, the submission which is spoken of as due to masters, even harsh masters, must be considered as due also to kings ; for what follows is based upon that as a founda-

[1] Tertullian, *On Repentance* [chap. vii] : ' Man's fear is honour to God.'

tion, and regards the duty of subjects not less than that of servants. And in the second place, the submission which is required of us carries with it the endurance of wrongs, as the saying is in regard to parents:

[Publilius Syrus, 8.]

> Your father love if he is just; if not,
> Bear with him.[1]

[Aelian, *Var. Hist.*, IX. xxxiii.] [Book XV [iii. 10].] [XXVII [xxxiv. 14].] [*Annals*, XVI [XII. xi].] [*Histories*, VI [IV. viii].]

A young man from Eretria, who for a long time had been frequenting the school of Zeno, was asked what he had learned there; he answered, 'To endure my father's rage.' Of Lysimachus Justin said: 'With greatness of soul he bore the insulting treatment of the king as if it had been that of a father.' In Livy we read: 'Harsh treatment on the part of our country, as on the part of our parents, we must assuage by suffering and enduring.' In Tacitus, again, 'The caprices of kings are to be endured'; and in another passage, 'We should pray for good emperors, put up with those we have.' Among the Persians, in the commendatory words of Claudian:

[*Against Eutropius*, II. 479 f.]

> Howe'er so cruel masters are,
> They are obeyed.

V.—*That rebellion is not allowable according to the practice of the early Christians*

1. From this law of the Lord the practice of the early Christians,[2]
[84] which is a most excellent commentary upon the law, did not depart. Although the administration of the Roman Empire was often in the hands of extremely bad men, and there was no lack of pretenders who opposed them under the pretext of rescuing the state, the Christians never associated themselves with their attempts. In the *Constitutions* of Clement the rule is laid down, 'It is wrong to resist the authority of a king.' Says Tertullian in his *Apology*:

[xxxv.]

> Whence come men like Cassius, and men like Niger, and men like Albinus? Whence they who beset a Caesar between the two laurels? Whence they who practise wrestling in order to strangle him? Whence they who in arms burst into the palace, more audacious than all the men like Sigerius[3] (this is the distinct reading of the manuscript which is in the possession of those distinguished young gentlemen the Dupuys) and Parthenius?

[1] Terence, *Hecyra* [line 301=III. i. 21]:

> For duty, Parmeno, bids me endure
> The hurts my mother causes.

Cicero, *For Cluentius* [vi. 17]: 'Men ought not only to maintain silence in regard to wrongs done to them by their parents, but even to endure such wrongs patiently.' In regard to this maxim Chrysostom has some fine remarks, *On Second Timothy*, and *Against the Jews*, Book V [VIII. vii].

What Epictetus says [*Manual*, lxv] and after him Simplicius on the two handles, is pertinent here.

[2] To this point canon xviii of the Council of Chalcedon relates, repeated in canon iv of the Trullan Council; also the Fourth Council of Toledo; *Capitulary* ii of Charles the Bald, *In Villa Colonia*; canon v of the Council of Soissons.

[3] Xiphilinus, *Domitian* [Dio Cassius, LXVII. xv]: 'Moreover Parthenius, a chamberlain, and

From among the Romans, if I mistake not, that is from among men who are not Christians.

Tertullian's allusion to the practice of wrestling refers to the murder of Commodus, which was accomplished by the hand of a wrestler acting under the orders of the prefect Aelius Laetus; yet in point of wickedness hardly any one was worse than this emperor. Parthenius, whose crime Tertullian likewise abhors, was the man responsible for the assassination of the extremely bad emperor Domitian. To these Tertullian compares the pretorian prefect, Plautianus, who had wished to kill Septimius Severus—truly a bloodthirsty emperor—in the palace. Arms had been taken up against the same Septimius Severus, under pretence of devotion to the state, by Pescennius Niger in Syria, and by Claudius Albinus in Gaul and Britain. But the action of these men also was displeasing to the Christians, as Tertullian boasts to Scapula. 'We are charged with treason,' he says; 'nevertheless among the followers of Albinus, or of Niger, or of Cassius, no Christians could ever be found.' The followers of Cassius were those who had joined Avidius Cassius, an excellent man; he took up arms in Syria, alleging as the reason that he was going to restore the state, which the neglect of Marcus Aurelius was bringing to ruin. [*To Scapula*, ii.]

2. Ambrose believed that wrong would be done not only to himself but also to his flock and to Christ, by Valentinian, son of Valentinian; yet he would not take advantage of an uprising of the people, who were thoroughly aroused, to offer resistance. 'Although under compulsion', he says, 'I know not how to make resistance.[1] I shall be able to grieve, to weep, to groan; against arms, soldiers, even the Goths, my weapons are my tears. Such are the defences of the clergy; in no other way ought I to offer resistance, in no other way can I resist.' In another passage he adds: 'The demand was made upon me that I calm the people. I made answer that it was my duty not to arouse the people; that the quieting of the people was in the hand of God.' *Against Auxentius*, V [ii; following *Letters*, xxi]. [*Letters*, xx. 10.]

The same Ambrose refused to make use of the troops of Maximus Theodoret, *Eccl. Hist.*, V. iv.

Sigerius, also one of the chamber attendants, together formed a plot to kill him.' Martial, Book IV [*Epigrams*, IV. lxxviii. 8]:

> Your talk is only of Sigerius,
> Parthenius, too, and others of that ilk.

The name was wrongly given not only in Tertullian but also in Suetonius [*Domitian*, xvii], where *Saturius* appears, and again in [Aurelius] Victor, as he is commonly called, where *Casperius* [*Epitome*, xii. 8] is read.

[1] Gratian has inserted these words, *Decretum*, II. xxiii. 8 [21]. The same Ambrose, *Letters*, xxxiii [xx]: 'Do you wish to cast me into chains? That is my desire; I shall not shield myself by means of the crowd round about me.'

Gregory the Great imitated the passage, *Letters*, Book VII. i: 'If I had wished to have a part in the death of the Lombards, to-day the Lombard nation would have neither king, nor dukes, nor counts, and would be dispersed in the utmost disorder.'

against the emperor, though the emperor was both an Arian and a persecutor of the church.

Against Julian, I [xcvi].

In illustration of the same attitude, Gregory Nazianzen declares that Julian the Apostate, while deliberating upon dreadful plans, was held back by the tears of Christians; he adds the reason, 'because this was the only resource they had against the persecutor.' And yet, the army of Julian was almost altogether made up of Christians. There

[lxxv.]

is the further fact that the cruelty of Julian, as the same Gregory observes, not only worked harm to the Christians but brought the state itself into very great danger. Pertinent is the comment of

Prop., lxxiv.

Augustine, explaining the words of the Apostle to the Romans: 'For the welfare of this life it is necessary that we be submissive, not offering resistance if they (the rulers) wish to take away anything from us.'

VI.—*The view which holds that it is permissible for subordinate officials to rebel against sovereign authority is refuted, both by argument and by Holy Writ*

1. In our time there are to be met with men who possess learning, it is true, but being too much under the influence of time and place have persuaded first themselves (for so I believe), then others, that what has been said is applicable only to private individuals and not also to subordinate officials.[1] They think that subordinate officials have the right to offer resistance to wrong-doing on the part of him who holds the supreme power; further, [85] that these do wrong if under such conditions they do not offer resistance.

The validity of this opinion ought not to be admitted. Just as in logic an intermediate species,[2] from the point of view of the genus, is a species, but from the point of view of a sub-species is a genus, so subordinate officials from the point of view of officials of lower rank are persons vested with public authority, but from the point of view of those possessing higher authority are private persons. All governmental authority possessed by public officials is in fact so subordinated to the sovereign power that whatever they do contrary to the will of him who holds it is divested of authority and is, accordingly,

Averroes, *On Metaph.,* V. vi.

to be considered as a private act. The saying of the philosophers is here in place, that an orderly arrangement is possible only in relation to a first point.

2. They who think otherwise seem to me disposed to bring into this world such a condition of affairs as existed in heaven, according

[1] Peter Martyr, *On Judges,* chap. iii; Pareus, *On Romans,* chap. xiii; Junius Brutus; Daneau, *Politici,* Book VI; and others.

[2] [95] 'Special genus', according to Seneca, *Letters,* lviii [VI. vi. 12].

to the tale the ancients used to tell, before a sovereign power arose; for at that time, they said, the lesser gods had not yet submitted to Jupiter. But the orderly arrangement of which I spoke, and the principle of subordination,[1] are recognized not alone by the common sense of mankind. From such recognition came the verse:

> Subject to a kingship still more powerful
> Each kingship is.

[Seneca, *Thyestes*, 612.]

Likewise the words of Papinius:

[*Silvae*, III. iii. 49 f.]

> In alternation all is ruled,
> And rules in turn.

Also Augustine's famous statement[2]:

> Consider the gradations of rank in human relations. If a subordinate official has given some order, the thing must be done; nevertheless if the proconsul orders the contrary, it is not to be done. A similar situation arises if the consul issues some order, and the emperor gives a different order. In such a case you do not treat official power with disrespect, but you choose to serve the higher authority; the official of lower rank ought not to be angry if preference is given to the higher.

Decretum, II. xi. 3. 97.

Of Pilate, Augustine said: 'The power which God had given to him was such that he was himself also under the power of Caesar.' *On the Gospel of John* [cxvi. 5].

3. Such subordination is proved also by divine authority. The chief of the Apostles desires that we submit ourselves in one way to the king, in another to public officials. We are to submit ourselves to the king as to the supreme authority, that is without any reservation except in regard to those things which God directly enjoins upon us; and He approves the endurance of wrong and does not forbid it. We are to submit ourselves to public officials as if they had been sent by the king, that is to those who derive their power from the king. When Paul desires that 'every soul be in subjection to the higher powers', he includes also the subordinate public officials.

1 Peter, ii. 1 [ii. 13 f.]. [*Romans*, xiii. 1.]

Among the Jewish people, where there were so many kings who treated with contempt divine as well as human law, the subordinate officials, among whom were very many upright and brave men, never assumed to themselves the right to oppose any force to the kings, unless they had received a special command from God, whose right over kings is supreme. On the contrary, Samuel showed what the duty of the elders was when, in the presence of the

1 Sam., xv. 30.

[1] Thus in the household first the father, then the mother, then the children; after these, the ordinary servants; lastly the under-servants.
See Chrysostom, *On First Corinthians*, xiii. 3 [Homily XXXII, vi].

[2] Augustine has almost the same words in his *On the Words of the Lord*, VI [= *Sermones de Scripturis*, lxii. 13].

elders and the people, he treated Saul with the customary respect, although Saul already was reigning badly.

4. And so among the Jews the condition of public worship also always depended upon the will of the king and the sanhedrin. Since, after the king, the public officials at the same time with the people promised that they would be faithful to God, this must be understood to mean, so far as it would be in the power of each. We have never read that even the images of false gods, which were standing in public places, were ever thrown down except by order of the people, when the state was a free republic, or by that of the kings, when kings were in power. If sometimes violence was used against kings, the fact is reported as evidence of the interposition of divine providence which permitted the deed, not as a mark of approval of the action in the sight of men.

5. The authors who maintain the opposite view are accustomed to bring forward the saying of Trajan, when he handed a dagger to the pretorian prefect: 'Use this for me, if I govern rightly; against me, if I govern badly.' But the fact must be recognized, [86] as is manifest from Pliny's *Panegyric*, that Trajan made it his particular care to see to it that nothing suggestive of kingly power should appear, but that he should act as truly a chief magistrate,[1] subject, accordingly, to the authority of the senate and the people; their decrees the prefect was bound to carry into effect, even against the chief magistrate himself. The case of Marcus Aurelius was similar; we read of him that he was unwilling to touch public funds unless authorized by a decree of the senate.

[Xiphil., LXVIII. xvi.] [lxvii. 8.]

Dio VI [Xiphil., LXXI. xxxiii].

VII.—*What view is to be taken in case of extreme and in other respects unavoidable necessity*

1. More serious is the question whether the law of non-resistance should bind us in case of extreme and imminent peril. Even some laws of God, although stated in general terms, carry a tacit exception in case of extreme necessity. Such a limitation was put upon the law of the Sabbath by learned men in the time of the Maccabees; hence the well-known saying: 'Danger to life breaks the Sabbath.' In Synesius, again, a Jew presents this excuse for having violated the law of the Sabbath: 'We were exposed to imminent danger of death.'[2]

[*Letters*, iv.]

This exception was approved by Christ, as also an exception in

[1] This course of action Pertinax and Macrinus afterward imitated; their excellent addresses you may see in Herodian [*Histories*, II. iii. 5–11; IV. xiv. 4–8].

[2] *1 Maccabees*, ix. 10, 43, and 44: 'When Bacchides had heard this, he came with a large army to the banks of the Jordan on the very day of the Sabbath. But Jonathan said to his men: "Let us rise up now, and fight for our lives; for our situation now is not as it was yesterday and day before yesterday."'

the case of another law, which forbade the eating of shewbread. The Jewish rabbis, in accordance with an ancient tradition, admit a similar exception in the case of the law forbidding the use of certain articles of food, and in some other cases; and rightly so. This does not mean that God has not the right to oblige us to submit ourselves to certain death; it does mean that since there are some laws of such a nature, we are not to believe that they were given with so inflexible an intent. The same principle holds even more manifestly in the case of human laws.

2. I do not deny that even according to human law certain acts of a moral nature can be ordered which expose one to a sure danger of death; an example is the order not to leave one's post.[1] We are not, however, rashly to assume that such was the purpose of him who laid down the law; and it is apparent that men would not have received so drastic a law applying to themselves and others except as constrained by extreme necessity. For laws are formulated by men and ought to be formulated with an appreciation of human frailty.

Now this law which we are discussing—the law of non-resistance—seems to draw its validity from the will of those who associate themselves together in the first place to form a civil society; from the same source, furthermore, derives the right which passes into the hands of those who govern. If these men could be asked whether they purposed to impose upon all persons the obligation to prefer death rather than under any circumstances to take up arms in order to ward off the violence of those having superior authority, I do not know whether they would answer in the affirmative, unless, perhaps, with this qualification, in case resistance could not be made without a very great disturbance in the state, and without the destruction of a great many innocent people. I do not doubt that to human law also there can be applied what love under such circumstances would commend.

3. Some one may say that this strict obligation, to suffer death rather than at any time to ward off any kind of wrong-doing on the part of those possessing superior authority, has its origin not in human but in divine law. It must be noted, however, that in the first instance men joined themselves together to form a civil society not by command of God, but of their own free will, being influenced by their experience of the weakness of isolated households against attack. From this origin the civil power is derived, and so Peter calls this an ordinance of man. Elsewhere, however, it is also called a divine ordinance, because God approved an institution which was beneficial

1 Peter, ii. 13.

[1] See Josephus, where he speaks of the guards of Saul [*Antiquities of the Jews*, VI. xiii. 9]. Polybius [Suidas, *Lexicon*, under προάστιμαν]: 'Among the Romans death was the penalty inflicted upon one who left his post.'

to mankind. God is to be thought of as approving a human law, however, only as human and imposed after the manner of men.

Adv. Monarchom., III. viii; VI. xxiii, xxiv.

4. Barclay, though a very staunch advocate of kingly authority, nevertheless comes down to this point, that he concedes to the people, and to a notable portion of the people, the right of self-defence against atrocious cruelty, despite the fact that he admits that the entire people is subject to the king. I readily understand that in proportion as that which is preserved is of greater importance, the equity of admitting an exception to the letter of a law is increased. [87] But on the other hand I should hardly dare indiscriminately to condemn either individuals, or a minority which at length availed itself of the last resource of necessity in such a way as meanwhile not to abandon consideration of the common good.

1 Sam., xxii. 2; xxiii. 13.

We may illustrate the point from the history of David, who, with the exception of a few deeds, is represented as having passed a life in accordance with the laws. Now David had about him first four hundred armed men, then a considerably larger number; for what purpose, except to defend himself in case violence should be attempted? But at the same time this fact should be noted, that David did not gather this force until after he had been informed by Jonathan, and had learned by numerous and sure evidences from other sources, that Saul was threatening his life. Even then, however, he did not fall upon cities, nor seize opportunities to fight; but he sought hiding-places, sometimes in places difficult of access, sometimes among foreign peoples, and with such scruple that he never did harm to those of his own nation.

5. Comparable with the conduct of David was that of the Maccabees. Their taking up of arms some, indeed, seek to justify on the ground that Antiochus was not their king, but a usurper. This view I consider untenable. For nowhere in their history do the Maccabees, and those who had espoused their cause, address Antiochus with any other title than that of king. And the title was properly applied, since for a considerable period the Jews had acknowledged the sovereignty of the Macedonians, and to their right to rule Antiochus had succeeded. For the rule of law forbidding that a foreigner should be set over the people must be understood as relating to voluntary choice; it has no bearing on that which the people were forced to do when constrained by the necessity of the times.

Others, again, declare that the Maccabees availed themselves of the right of a people entitled to self-government. This argument, however, is as devoid of foundation as the first. For the Jews were first reduced to subjection by Nebuchadnezzar, by right of conquest; and by the same right they rendered obedience to the successors of the Chaldeans, that is, the Medes and Persians, whose entire empire

passed under the rule of the Macedonians.[1] Hence Tacitus calls the Jews 'the most insignificant part of those who were in subjection while the East was under the power of the Assyrians, the Medes, and the Persians'. The Jews obtained no concession whatever from Alexander and his successors, but came under their absolute power without any stipulation, just as they had previously been under the power of Darius. If from time to time the Jews were permitted openly to practise their religious rites and to follow their own laws, their right to do so was by sufferance, resting on the goodwill of the kings, not on any legal provision safeguarding their government. *Histories*, I. v [V. viii].

The Maccabees, therefore, had no justification except extreme and unavoidable danger. This justification held, at any rate, as long as they kept within the limits of self-defence, so that, following the example of David, they withdrew into places difficult of access, seeking safety; and as long as they did not use arms except when they were attacked.

6. Meanwhile the caution must be observed that even in such danger, the person of the king must be spared. Those who think that David conformed to this rule not from a sense of duty, but from a higher purpose, are mistaken. For David himself openly said, that no one who laid hands on the king could be innocent. Undoubtedly he knew that it was written in the law: 'Thou shalt not revile the gods', that is the highest judges, 'nor curse a ruler of thy people.'[2] The special mention of the higher powers in this law indicates that something noteworthy is enjoined. Wherefore Optatus of Milevis, speaking of this course of action on the part of David, says: 'A memory filled with the commandments of God held him back.'[3] And into the mouth of David he puts these words: 'I wished to vanquish my enemy; but the first duty is to keep the commandments of God.' *1 Sam.*, xxvi. 9. *Deut.*, xxii. 8 [*Exodus*, xxii. 28]. II [xxv].

7. Malicious false statements are not permissible even against a private individual; accordingly, in the case of a king malicious statements even of what is true must be refrained from, for the reason that, as the author of the *Problems* which bear the name of Aristotle says: 'He who reviles the ruler works [88] injury to the Sec. xl [xxix. 14].

[1] Justin, Book XXXVI [XXXVI. iii]: 'Xerxes, king of the Persians, was the first to conquer the Jews. Afterward along with the Persians themselves they came under the rule of Alexander the Great, and they remained a long time in the power of the Macedonians. Having revolted from Demetrius they sought the friendship of the Romans, and were the first among all the peoples of the Orient to regain their freedom, since the Romans then easily became generous at the expense of another.'

[2] Joab, son of Shimei, in Josephus [*Antiquities of the Jews*, VII. xi. 2]: 'Shall you not die, who have dared to curse him that God has established on the throne?'

[3] In regard to David, Josephus [VI. xiii. 4]: 'But immediately touched with repentance he said that it was wrong to kill his lord'; in a later passage [VI. xiii. 9]: 'He said that it was a terrible crime to slay a king, no matter how wicked; for over the head of one who did such a deed punishment, at the hands of Him who gave the king, would be suspended.'

state.'[1] If, then, harm must not be done to the ruler with speech, surely much less with the hand. Hence we read, that David was filled with penitence because he had violently laid hold of the garment of the king; so profound a sense did he have of the inviolability of the king's person! And not without reason. For since the sovereign power is inevitably exposed to the hatred of many,[2] the security of him who is charged with the exercise of it must be safeguarded in an altogether exceptional way.

1 Sam., xxiv. 6.

This the Romans determined even in the case of the tribunes of the people; they enacted that the tribunes should be safe from seizure, that is inviolable. Among the sayings of the Essenes was this, that kings are to be regarded as holy; and there is a noteworthy expression in Homer:

[*Iliad*, v. 566 f.]

> For the shepherd of the people did he fear,[3]
> Lest harm should come to him.

[X. iii. 3.] Not without reason, we read in Curtius, do 'the nations which are under the government of kings, revere the name of the king as that of a god'. Says Artaban,[4] the Persian: 'Of the many good laws which we have this is the most excellent, that we must reverence and adore the king, as the image of God who preserves all things.' 'It is neither right nor permissible', says Plutarch in his life of *Agis*, 'to lay hands on the person of a king.'

[xix= p. 804 A.]

8. It is a more difficult question to determine whether, in this matter, as much is permitted also to Christians as was permitted to David or to the Maccabees; for the Master of the Christians, on so many occasions bidding them to bear the cross, seems to exact a greater degree of long-suffering. Surely when the higher powers

[1] Julian, *Misopogon* [342 B]: 'Laws in fact are severe in the interest of rulers, so that he who has done harm to a ruler has from excess of feeling trampled the laws under foot.'

[2] Quintilian, *Declamations*, 348: 'This is the situation of all who undertake the government of a state, that in doing the things which in the highest degree concern the common safety they are obliged to subject themselves to a kind of unpopularity.'

See the words of Livia to Augustus on this point, in Xiphilinus, from Dio [Dio Cassius, *Roman History*, LV. xv].

[3] Well does Chrysostom say, *On First Timothy* [i. 1 = Homily I, i]: 'If one kills a sheep, the flock is made smaller by him; but if any one has taken the shepherd out of the midst, the whole flock is scattered by him.'

Seneca, *On Clemency*, Book I, chap. iii [I. iii. 3–5]: 'His [the king's] sleep men protect by night-watches; they press to his sides and surround him in order to defend him; they expose themselves to the dangers which threaten him. Not without reason is this universal custom on the part of the peoples and cities, to protect and love their kings, and to sacrifice themselves and all they have whenever the safety of the ruler demands it. This is not a cheapening of themselves, nor [96] madness, that so many thousands give themselves to the sword for the sake of one and with many deaths ransom a single life, not infrequently the life of one who is aged and feeble. Just as the whole body is under the domination of the mind'—what immediately follows is merely an expanding of the thought—'so this vast multitude, which environs the life of one, is ruled by his spirit, is swayed by his reason, destined to overburden itself and break up into parts unless sustained by his wisdom. Men therefore devote themselves to their own safety,' etc.

Add what is said below in II. i. 9.

[4] In Plutarch, *Themistocles* [xxvii= 125 C].

threaten death to Christians on account of their religion, Christ concedes to them the right to flee—to those, at any rate, whom the necessary discharge of duty does not bind to a particular place. Beyond the right to flee, he makes no concession. Peter, in fact, says that in suffering Christ left to us an example that we should follow; though he was free from sin, and without guile, 'when he was reviled he reviled not again; when he suffered, threatened not, but committed himself to Him that judgeth righteously.' He says also that Christians ought to return thanks to God, and rejoice, if as Christians they suffer punishment. And we read that the Christian religion waxed strong chiefly by reason of such long-suffering. *1 Peter*, iv. 12–16.

9. Thus the early Christians, fresh from the teachings of the Apostles and of Apostolic men, both understood the Christian rules of conduct better, and lived up to them more fully, than did the men of later times; wherefore I think that the greatest injustice is done to them by those who think that their reason for not defending themselves, when in certain danger of death, was lack of strength, not intention. Imprudent, surely, and devoid of shame, would Tertullian have been if, in the presence of the emperors, who could not be in ignorance of the facts, he had dared with so much assurance to lie when he said: [*Apology*, xxxvii.]

> If we wished to act as open enemies, and not merely as secret avengers, should we lack the power of numbers and of forces? Are the Moors, forsooth, and the Marcomans, and even the Parthians, or all the nations which, in contrast with us, are confined to one region and hemmed in by their own boundaries—are they more numerous than we, who are spread over the whole earth? Strangers we are, and yet we have filled all places belonging to you, your cities, islands, fortified posts, towns, places of assembly, even your camps; your tribes, town-councils, palace, senate, Forum. Only your temples have we left to you. What war should we not have been capable of undertaking, and ready to undertake, even if inferior in forces—we who are so willingly slaughtered—if according to our doctrine it were not more lawful to suffer ourselves to be killed than to kill?

In this matter Cyprian, too, follows his teacher, and openly affirms: 'This is the reason why no one of us offers resistance, when he is seized, or tries to avenge himself for unjust violence on your part, albeit our people are numerous and well provided with means; sure confidence in a future vengeance makes us patient. The innocent yield to the guilty.'[1] 'For', says Lactantius, 'we put our trust [89] in the majesty of Him who is able to exact vengeance alike for contempt for Himself and for sufferings and wrongs inflicted on His servants. *To Demetrianus* [xvii]. V [xxi, 9–10].

[1] These words are in the treatise *To Demetrianus* [chap. xvii]. Elsewhere (*Letters*, I. i) the same author says: Our opponent 'understood that the soldiers of Christ are watchful, that they are sober and stand armed for battle, that they cannot be conquered, that they can die; and for this very reason they are unconquerable, because they do not fear to die, and they do not fight against those who attack them, since it is not permitted to them, although innocent, to slay one who is guilty, but they freely give both their lives and their blood.'

And so, when we are suffering outrages unspeakable, we do not resist, even with a word; but we leave vengeance to God.'

On Joshua, VI, qu. x [*On Heptateuch*, VI. x]. *Letters*, clxvi [cv. 7].

This is precisely what Augustine had in mind, when he said: 'In such circumstances let the just man above all reflect, that only he for whom it is right to wage war should commence war; for this is not right for all men.' 'Whenever the emperors', says Augustine in another passage, 'hold a mistaken view, in order to protect their delusion against the truth they establish laws through the enforcement of which the upright are tested and receive the crown.' In still another passage he writes: 'Peoples should bear with rulers, and slaves with masters, in such a way that they may sustain themselves under temporal ills through the exercise of endurance, and hope for blessings that abide forever.' Elsewhere, speaking of the example of earlier Christians, he thus characterizes it:

[*On Psalms*, cxxiv. 8.]

City of God, XXII [vi. 1].

> And at that time the city of Christ, although it was still wandering over the earth and was able to muster armies of so great peoples against impious persecutors, did not fight for temporal safety, but, rather, refrained from resisting, that it might obtain eternal safety. Christians were bound, were imprisoned, were beaten, were twisted on the rack, were tortured with fire, were mangled, were slaughtered, and yet they multiplied. It was not for them to fight for safety, save only to scorn the safety of this world in comparison with salvation.

[*On John*, xviii. 10.]

10. The words of Cyril, commenting on the passage in John about the sword of Peter, are of the same import, and not less noteworthy.

The Theban legion, as the *Acts* [of martyrdom] informs us, consisted of six thousand six hundred and sixty-six soldiers, all of whom were Christians. When the emperor Maximian, being in the neighbourhood of Martigny, tried to force his army to offer sacrifice to false gods, this legion started to march to Agaunum [St. Maurice]. When the emperor sent a messenger thither to order them to come and sacrifice, the soldiers of the legion refused. Maximian thereupon ordered that every tenth man be put to death by his aids, who easily carried out the order, since no one offered resistance.

11. The ranking officer of the legion was Maurice,[1] whose name was afterwards given to the town of Agaunum. On the authority of Eucherius, bishop of Lyons, we read that at this juncture Maurice addressed his men as follows:

[1] In regard to the honours paid to this martyr among the Swiss, see Guilleman [*History of Switzerland*, I. xv and II. viii].

In an ancient account of the transfer of the relics of Saint Justin to New Corbie we read: 'Whence, in accordance with the trustworthy character of the *Chronicles*, we conclude that he suffered in that most cruel and unparalleled persecution, the tenth after the persecution under Nero. This was more terrible than the preceding persecutions in that it sent to heaven an imposing host of martyrs, among whom a notable company were the companions of Saint Maurice, and the mirror of innocence.'

On the transfer of the relics of Theban martyrs to Brunswick see Krantz, *History of Saxony*, VII. xvi.

How I did fear that some one of you—it is such an easy thing for armed men to do—under the appearance of self-defence would try to prevent these most blessed funeral rites! For my part, in order to forbid such an act I was already on the point of following the example of our Christ, who with a command uttered by his own voice put back into the sheath the sword that had been drawn out by the Apostle. Thus he teaches us that the courage which comes from trust in Christ is stronger than all arms, in order that no one may with mortal hands try to stay a mortal work; nay rather, that each may complete the work begun, through unfaltering loyalty to his faith.

After the decimation, the emperor gave the same order to the survivors as before. They all replied:

Caesar, as soldiers we belong to you, and we took up arms in order to defend the Roman state. We have never deserted in the presence of war, nor evaded the requirements of military service, nor incurred the disgrace of punishment for cowardice. We should always be obedient to your orders also, excepting that, as instructed in the rules of the Christian life, we must avoid the worship of demons and their altars always polluted with blood. We have learned that you are determined either to defile us Christians with sacrilegious acts, or to cow us by decimation. You have no need to spend longer time searching us out as if we were concealing ourselves: know that we are all Christians. You will have the bodies of us all in your power; over our souls, which look only to their Master, Christ, you will have no power.

12. Then Exsuperius, standard-bearer of the legion, it is said, addressed it thus:

Most excellent fellow-soldiers, you see that I carry standards of the wars of this world. But not to such arms do I summon you, not for such wars do I seek to arouse your spirits and courage. It is yours to choose a different kind of battle. Not through the use of these swords can you press forward to the kingdom of heaven.

Then he bade carry this message to the emperor: 'Despair, which is most brave in perils, Emperor, has not armed us against you Look, we are holding [90] our weapons, and shall resist not,[1] because we prefer to die rather than conquer, and we are more eager to perish in innocency than to live in guilt.' Afterward he said: 'We are throwing away our weapons. Your followers will find our right hands weaponless, but our hearts armed with the catholic faith.'

13. Thereupon a butchery of the unresisting men followed. In his account of it Eucherius uses these words: 'The greatness of the number did not protect these righteous men from punishment, though generally when a great number is involved in an infraction of law punishment is not enforced.' In an ancient *Martyrology* the story is thus told:

And so they were cut down indiscriminately with swords, not uttering a cry of protest; they even laid aside their weapons and offered their throats or bared bodies

[1] Similar are the words of the Alexandrian Jews addressed to Flaccus [rather, addressed by Jews of Judaea to Petronius; Philo, *On the Embassy to Gaius*, chap. xxxii]: 'Unarmed we are, as you see, and yet some bring charges against us as if we were public enemies. Even those members which nature gave to us for self-defence we have put behind us, where they can do nothing; we offer our bodies unprotected and ready to suffer the attack of those who shall wish to kill us.'

to their slayers. They were not stirred by the greatness of their number or by the movement of their weapons, to defend with steel the justice of their cause. They remembered only this, that they were confessing Him who was led to death without uttering a cry of protest; as a lamb he opened not his mouth. They, also, as a flock of sheep of the Lord suffered themselves to be torn in pieces as by wolves rushing upon them.

14. Valens [1] impiously and cruelly raged against those who, in accordance with the Holy Scriptures and the tradition of the fathers, professed the 'homoousian' doctrine. Although the number of believers was very great, they never defended themselves with arms.

1 Peter, ii. 21. *Matthew*, x. 39. *Luke*, xii. 33 [xvii. 33].

15. Surely when long-suffering is enjoined upon us, the example of Christ, we see, is often brought forward for our imitation, as we just now heard in the case of the Theban soldiers; and His long-suffering was prolonged even until death. He who thus loses his life is declared by Christ truly to have gained it.

We said that resistance cannot rightly be made to those who hold the sovereign power. There are certain points which we now ought to bring to the reader's attention, in order that he may not consider those guilty of disobeying this law who in reality are not guilty.

VIII.—*That the right to make war may be conceded against him who has the chief authority among a free people*

First, then, if rulers responsible to the people, whether such power was conferred at the beginning or under a later arrangement, as at Sparta [2]—if such rulers transgress against the laws and the state, not only can they be resisted by force, but, in case of necessity, they can be punished with death. An example is the case of Pausanias, king of the Lacedaemonians. And since the earliest kingships of Italy were of this character, it is not surprising that, after narrating the exceedingly dreadful crimes of Mezentius, Virgil adds:

> Then all Etruria in just anger rose; [3]
> The punishment of death forthwith demand
> They for their king.

[1] See the excerpts from John of Antioch, published from the manuscript of Nicholas Peiresc, a man worthy of everlasting memory.

[2] Plutarch, *Lysander* [xxx = p. 450]: 'The Spartans summoned their king to trial for his life, but he evaded it and fled to Tegea.'

The same author, *Sulla* [*Comparison of Lysander and Sulla*, ii = 476 C]: 'The Spartans took away the kingship from some of their kings, on the ground that they were not fitted to be kings, but were insignificant and of no account.'

In regard to Agis who was condemned unjustly, but nevertheless condemned, see the same Plutarch [*Agis*, xix = 803 D–F].

The Mosynoecians punished their king by starvation; Mela, Book II [I. xix].

[3] And in respect to those who were rising against Mezentius the Etruscan soothsayer said [Virgil, *Aeneid*, VIII. 500 f.]:

> Whom against the foe
> Just resentment urges.

IX.—*That the right to make war may be conceded against a king who has abdicated the sovereign power*

In the second place, if a king, or any other person, has renounced his governmental authority, or manifestly has abandoned it, after that time proceedings of every kin are permissible against him as against a private person. But he is by no means to be considered as having renounced a thing who is merely too neglectful of it.

X.—*That the right to make war may be conceded against a king who alienates his kingdom, but only so far as to prevent the transfer*

In the third place, Barclay holds the opinion that if a king alienates his kingdom, or places it in subjection to another, the kingdom is no longer his. Book IV. xvi.

I do not go so far. For an act of this character, if the kingship is conferred by election or by a law of succession, is null and void, and acts which are null and void do not have any effect in law. Nearer the truth, in my opinion, is the view of the jurists in regard to a usufructuary, to whose position, we have said, that of such a king is analogous; by alienating his right to a third person the usufructuary effects nothing. And the statement that the usufruct reverts to the owner of the property must be construed in accordance with the period fixed by law. *Instit.* II. iv, § 3. *Digest,* XXIII. iii. 66.

If, nevertheless, a king actually does undertake to alienate his kingdom, or to place it in subjection, I have no doubt that in this case he can be resisted. For the sovereign power, as we have said, is one thing, the manner of holding it is another; and a people can oppose a change in the manner of holding the sovereign power, for the reason that this is not comprised in the sovereign power itself. With this you may not ineptly compare a remark of Seneca, in respect to a case by no means dissimilar: [91] 'And if a man is bound to render obedience in all respects to his father, he is not bound to be obedient to a command through which the father ceases to be a father.' *Controversies,* II. ix [ix. 20].

XI.—*That the right to make war may be conceded against a king who openly shows himself the enemy of the whole people*

In the fourth place, says the same Barclay, the kingdom is forfeited if a king sets out with a truly hostile intent to destroy a whole people.[1]

[1] For a like reason Gracchus ingeniously maintained that he who is tribune of the people ceased by right to be such; his words are worth reading, in Plutarch [*Tiberius Gracchus,* xv = p. 831 D].

John Major, on the fourth book of the *Sentences* [of Peter Lombard], says that a people cannot [97] deprive itself of the power of deposing the prince in the event that he shows a disposition to destroy it. The principle is readily developed from what is said here.

This I grant, for the will to govern and the will to destroy cannot coexist in the same person. The king, then, who acknowledges that he is an enemy of the whole people, by that very fact renounces his kingdom. This, it is evident, can hardly occur in the case of a king possessed of his right mind, and ruling over a single people. Of course, if a king rules over several peoples, it can happen that he may wish to have one people destroyed for the sake of another, in order that he may colonize the territory thus made vacant.

XII.—*That the right to make war may be conceded against a king who has lost his kingdom in consequence of a commissory law*

Fifthly, if a kingdom be granted under the condition that upon the commission of felony against the overlord, or the violation of a clause inserted in the grant of power, that if the king do thus and so [1] the subjects are released from all duty of obedience to him, in such a case also the king reverts to the position of a private person.

XIII.—*That the right to make war may be conceded against a king who, possessing only a part of the sovereign power, seeks to possess himself of the part that does not belong to him*

Sixthly, in case the sovereign power is held in part by the king, in part by the people or senate,[2] force can lawfully be used against the king if he attempts to usurp that part of the sovereign power which does not belong to him, for the reason that this authority does not extend so far.

In my opinion this principle holds, even though it has already been said that the power to make war should be reserved to the king. For this, it must be understood, refers to external war. For the rest, whoever possesses a part of the sovereign power must possess also the right to defend his part; in case such a defence is resorted to, the king may even lose his part of the sovereign power by right of war.

XIV.—*That the right to make war is conceded against a king in case liberty to offer resistance has in certain cases been reserved*

Seventhly, if in the conferring of authority it has been stated that in a particular case the king can be resisted,[3] even though such

[1] For the kingdom of Arragon see Mariana [*History of Spain*], Book VIII.

[2] An example you find in the Genoese republic, Bizarri [*History of Genoa*], Book XVIII [p. 414]: in Bohemia in the time of Wenceslaus [Dubraw], *History*, Book X. Add Azor, *Moral Institutes*, Book X, chap. viii, and Lambert von Aschaffenburg, in regard to Henry IV.

[3] See the examples in De Thou's *History*, Book CXXXI, in the account of the year 1604, and in Book CXXXIII, in the account of the year 1605, both in relation to Hungary; in Meyer [*Annals of*

an agreement does not involve the retention of a part of the authority, some natural freedom of action, at any rate, has been reserved and exempted from the exercise of royal power. For he who alienates his own right can by agreement limit the right transferred.

XV.—*How far obedience should be rendered to a usurper of sovereign power*

1. We have spoken of him who possesses, or has possessed, the right of governing. It remains to speak of the usurper of power, not after he has acquired a right through long possession or contract, but while the basis of possession remains unlawful. Now while such a usurper is in possession, the acts of government which he performs may have a binding force, arising not from a right possessed by him, for no such right exists, but from the fact that the one to whom the sovereignty actually belongs, whether people, or king, or senate, would prefer that measures promulgated by him should meanwhile have the force of law, in order to avoid the utter confusion which would result from the subversion of laws and suppression of the courts.

Vict., *De Potest. Civ.*, no. 23; Suarez, *De Legibus*, III. x. 9. Lessius, *De Iust. et Iure*, II. xxix, dub. 5 [9], no. 73.

Cicero disapproved of the laws of Sulla as harsh toward the children of the proscribed, whom they did not permit to become candidates for public office. Nevertheless he thought that it was necessary to live up to them, asserting, as Quintilian informs us, that the welfare of the state was so bound up with these laws that if they should be done away with the state itself could not survive. Of the acts of the same Sulla, Florus says: 'Lepidus was making ready to annul the acts of this great man; and there was good reason for such procedure, provided only the result could be accomplished without bringing disaster upon the state.' A little further on he adds: 'The interest of the state, sick, as it were, and suffering from injuries, required that it have rest in any way possible, in order that the wounds might not be torn open by the application of remedies.'

[*Institutes of Oratory*,] XI. i. [85].

[III. xxiii.]

2. In the case of measures promulgated by the usurper which are not so essential, and which have as their purpose to establish him in his unlawful possession, obedience is not to be rendered unless disobedience would involve grave danger. But whether it is permissible to use violence in overthrowing such a usurper of authority, or even to put him to death, is the question before us.

Belgium] under the year 1339, on the subject of Brabant and Flanders; and under the year 1468, in relation to the treaty between the king of France and Charles of Burgundy.

Add, in regard to Poland, what Chytraeus has, *History of Saxony*, Book XXIV; and in relation to Hungary, Bonfini, [*History of Hungary*,] Decade IV, Book IX.

XVI.—*That resistance by force may be used against a usurper by virtue of a right of war still continuing*

In the first place, if the usurper has seized the governmental power by means of a war that is unlawful and not in accordance with the law of nations, and no agreement has been entered into afterward, and no [92] promise has been given to him, but possession is maintained by force alone, it would seem that the right to wage war against him still remains, and whatever is permissible against any enemy is permissible against him. Just as an enemy, so also a usurper, under such conditions, can lawfully be put to death by any one, even by an individual. 'Against men guilty of treason and against public enemies', says Tertullian, 'every man is a soldier.'

Apology [ii]. *Code*, III. xxvii. 2.

Thus also, in the interest of general tranquillity, the right of enforcing public punishment against deserters from military service is granted to all.

XVII.—*That resistance by force may be used against a usurper by virtue of a pre-existing law*

[=p. 570 C D.]

With Plutarch, who expresses the opinion in his book *On Fate* dedicated to Piso, I hold that the same conclusion must be accepted in the case that prior to the usurpation there was in existence a public law which conferred upon any man the right to kill a person who dared to do this or that which falls within its purview; who, for example, though a private individual, should have surrounded himself with a bodyguard and should have seized the citadel; who had put to death a citizen uncondemned, or without lawful judgement; or who had chosen public officials without regular elections.

Many such laws were in force in the Greek states, and in consequence the killing of tyrants of the sort referred to must have been thought justifiable. Such, at Athens, was the law of Solon, which was renewed after the return from the Piraeus; this was directed against those who should have done away with the popular form of government, or who, after it had been done away with, should hold office. Of similar character was the Valerian Law [1] at Rome, against any who should assume the duties of a public official without the authorization of the people. Such, again, was the consular law passed after the absolute rule of the Decemvirs, forbidding the appointment of any magistrate whose decisions should be without appeal; the man

[1] Plutarch, *Publicola* [xii= 103 B]: 'Giving permission without trial to kill him who purposed to rule as a tyrant.' Later he adds [*Comparison of Solon and Publicola*, ii= 110 C]: 'If any one should attempt to rule as a tyrant, Solon appointed a penalty only after conviction, but Publicola gave permission to kill him even before a trial.'

responsible for such an appointment might be lawfully and rightfully slain.

XVIII.—*That resistance by force may be used against a usurper by virtue of a mandate of one possessing sovereign power*

It will likewise be permissible to put a usurper to death in case the deed is explicitly authorized by the true possessor of sovereign power, whether king, or senate, or people.

To these we should add also guardians of the children of kings, such as Jehoiada was in the case of Joash, when he forced Athaliah from the kingship. *2 Chron.*, xxiii.

XIX.—*Why resistance to a usurper should be limited to the cases mentioned*

1. Outside of the cases which have been considered I cannot concede that it is permissible for a private citizen either to put down by force, or to kill, a usurper of sovereign power. For it may happen that he who holds the sovereign power by right would prefer that the usurper should be left in possession rather than that the way should be opened for dangerous and bloody conflicts, such as generally take place when those who have a strong following among the people, or friends outside the country, are treated with violence or put to death. At any rate, it is not certain that the king or the people would wish that matters should be brought to such extremities, and without their known approval the use of violence cannot be lawful.

Favonius used to say, 'Civil war is a worse evil than unlawful government.' 'To me', Cicero declared, 'peace on any terms between citizens seems more advantageous than civil war.' Titus Quintius affirmed that it was better that the tyrant Nabis[1] be left in power in Sparta, for the reason that his expulsion could be accomplished only with utter ruin of the state, which through the attempt to retain its liberty would be brought to destruction. Of similar purport is the thought of Aristophanes, that a lion ought not to be reared in a city; but if a lion has been so reared, the people must endure it. [Plutarch, *Brutus*, xii = 989 A.] [*Philippics*, II. xv. 37.] Livy, XXXIV [xlix]. [*Frogs*, 1431 f.]

[1] This is explained by Plutarch in the life of Titus Quintius [*T. Quintius Flamininus*, xiii = 376 E] as follows: 'When he saw that the tyrant could not be destroyed without serious hurt to the other Spartans.'

Nor foreign to this subject is what Plutarch relates in his *Lycurgus* [xx = 52 E], that a certain Spartan, having read the lines

As tyranny they sought through Mars to quench,
Mars, merciless, before Selinus' walls
Swept them away,

made answer: 'The men met a just death; for they ought to have waited till tyranny should burn itself out.'

[*Histories*, IV. lxvii.] 2. An exceedingly weighty question it surely is, as Tacitus says, which is preferable, independence or peace; it is an extremely difficult political problem, Cicero found, to determine 'whether, when one's country is oppressed by an unlawful exercise of power, every effort should be put forth to accomplish its abolition, even if the state should thereby be brought into extreme peril'. Yet individuals ought not to take it upon themselves to decide a question which involves the interest of the whole people. That is, then, an obviously mischievous sentiment:

Letters to Atticus, IX. iv.

[Lucan, I. 351.]

> We are taking away the masters
> From a city content to serve them.[1]

Appian, *Civil Wars*, I [vii. 57].

Thus Sulla, being asked why he was attacking his country with arms, made answer, [93] 'in order to deliver it from tyrants'.

Letters, I [ix. 18].

3. Better advice was given by Plato in his letter to Perdiccas, as thus expressed in Latin by Cicero: 'Your efforts in public affairs should be carried only so far as shall meet the approval of your fellow citizens; violence should not be used against either a parent or native land.' The same thought is found also in Sallust: 'To govern one's country or one's subjects by force, even if you possess the power and may be correcting abuses, is nevertheless unsuitable, especially since all sweeping changes involve slaughter, flight, and other incidents of a hostile nature.'

Jugurthine War [iii. 3].

[xii = p. 989 A.]

Not far from this point of view is the remark of Stallius quoted by Plutarch, in his *Life of Brutus*: 'It is not fair that a man who is prudent and wise should plunge into the midst of dangers and troubles for the benefit of those who are without scruple and devoid of sense.' Not inappropriately in the same connexion you may quote the statement of Ambrose:

On Duties, II. ii [II. xxi. 102].

> This also contributes to the increase of good reputation, if you rescue a poor man from the hands of the mighty, and if you save from death a man who has been condemned, in so far as such a result can be accomplished without raising a disturbance. We must beware lest we seem to act for the sake of display rather than pity, and cause more grievous wounds while we are trying to apply remedies to wounds of less consequence.

II. ii, qu. 42, art. 2.

Thomas says that the destruction of a government even though tyrannical is sometimes an act of sedition.

Judges, iii. 15; *Nehem.*, ix. 27.

4. The deed of Ehud, which he committed upon Eglon, king of Moab, ought not to incline us to the opposite view. For the sacred text plainly bears witness that Ehud was raised up by God Himself as an avenger, that is to say, under a special command. And in fact it is not clear that this king of the Moabites did not possess his right of governing by virtue of an agreement. For in the case of other kings

[1] Plutarch in *Cato the Elder* [xii = 342 F], speaking of Antiochus the Great: 'He made it his pretext for war to free the Greeks, who had no lack of freedom.'

also, God caused His judgements to be executed by means of chosen servants, as in the case of Joram by the hand of Jehu. *2 Kings,* ix.

XX.—*When the right of sovereignty is in dispute private persons ought not to take it upon themselves to settle the matter*

Above all, in case of a controversy the private individual ought not to take it upon himself to pass judgement, but should accept the fact of possession.

Thus Christ bade that tribute be paid to Caesar because the coin bore Caesar's image,[1] that is because Caesar was in possession of the governing power. *Matthew,* xxii. 20.

[1] This is the most sure indication of possession ; see Bizarri, *History of Genoa,* Book XVIII 423].

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CHAPTER V

WHO MAY LAWFULLY WAGE WAR

I.—*The efficient causes of war are in part those who wage war on their own account as principals*

As in other matters, so also in acts originating in the will, there are ordinarily three kinds of efficient causes—principal agents, auxiliary agents, and instruments.

In war the principal efficient cause is generally the person whose interest is at stake—in private war, the individual; in public war, the public power, in most cases the sovereign power. Whether war can be made by one on behalf of others who do not make war on their own account, we shall see elsewhere. Meanwhile we shall hold to this principle, that by nature every one is the defender of his own rights; that is the reason why hands were given to us.

II.—*The efficient causes of war are in part those who wage war on another's account, as auxiliary agents*

Digest, XVIII. vii. 7.
Cicero, *On Duties*, II [v. 16], following Panaetius.
Doctors, *On Dig.*, XLVII. ii. 7.
Code, X. i. 5.
Rhetoric to Alexander, iii [ii].

1. But to render service to another, so far as we can, is not only permissible, it is also honourable. Those who have written on the subject of duties rightly say that nothing is more useful to a man than another man. There are, however, various ties which bind men together and summon them to mutual aid. Thus those who are related by kinship unite to assist one another. Neighbours, too, and those who belong to the same state, call on one another for help; hence the cry 'Hither, Romans' and the word 'to call the Romans' (*quiritari*). Aristotle said that every man ought to take up arms on his own behalf, if he had suffered wrong, or on behalf of his kindred or benefactors, or of his associates, in case wrong should have been suffered by them. It was the teaching of Solon [1] that those commonwealths will be the most fortunate in which each citizen views the wrongs of others as his own.

2. But in default of all other ties, the common bond of human

[1] The words are quoted by Plutarch [*Solon*, xviii = 88 D]: 'Of cities that is the best to live in, in which those who have not suffered wrong, not less than those who have, put forth effort to punish them who attempt to do wrong.'

Pertinent are the words of Plautus, *Rudens* [III. ii. 12 = line 626]:

Wring the neck of injury
Before she reaches you.

nature is sufficiently strong. Devoid of interest to man is nothing that pertains to man. In the words of Menander[1]:

> If we our strength should all together join,
> Viewing each other's welfare as our own,
> If we should each exact full punishment
> From evil-doers for the wrongs they do,
> The shameless violence of wicked men
> Against the innocent would not prevail;
> Guarded on every hand, and forced to pay
> The penalties which their misdeeds deserve,
> They soon would cease to be, or few become.

Bartolus, *On Dig.*, I. i. 3; 7 and 8; Jason, same, 29.
Castren., *On Dig.*, I. i. 1, § 4.
Bartolus, *On Dig.*, XLIX. xv. 24, 9.
Innocent, *On Decretals*, II. xxiv. 13, and II. xiii. 12, no. 16.
Panormitanus, no. 18.
Sylvester, word *bellum*, qu. 8.
Divine Institutes, VI. [x. 3].

Similar is this saying of Democritus[2]: 'Those who are oppressed by wrong-doing must be defended to the limit of our strength, and not neglected; for that is a work of justice and goodness.' The thought is thus developed by Lactantius:

> God, who did not impart wisdom to the other animals, made them more safe from attack and from danger by natural means of defence. But because He made man naked and weak, to the end that He might the rather equip him with wisdom, in addition to other gifts He gave to man this feeling of mutual regard, that man should defend, should love, should protect man, and should both receive and furnish help against all dangers.

III.—*The efficient causes of war are in part those who wage war as instruments, as servants and subjects*

When we use the word 'instruments' in this connexion we do not mean 'weapons' and similar things; we mean persons whose acts of will are dependent on the will of another.

An instrument, as we use the term here, is a son in relation to his father, viewed as by nature a part, so to speak, of the father; such an instrument also is a slave in relation to his master, a part, as it were, in a legal sense. For just as a part is a part of the whole not only in the same relation that the whole sustains to the part, but also the very thing which constitutes a part pertains to the whole, so possession becomes something [99] of the possessor. Says Democritus,[3] 'Use slaves just as parts of the body, one for one purpose, another for another.' What a slave is in the household, a subject is in the state, an instrument, accordingly, of the ruler.

Code, XI. xlviii. 22.
Aristotle, *On Morals* [*Nic. Ethics*], V. x.
Code, IX. ix. 4.
Sen. I. iv.

IV.—*By the law of nature no one is enjoined from waging war*

There is no doubt that by nature all subjects may be used for purposes of war; but certain classes are exempted by special enact-

[1] [In Stobaeus, xliii. 30.]
[2] [In Stobaeus, xlvi. 43.]
[3] [In Stobaeus, lxii. 45.]

ment, as formerly slaves[1] at Rome, now men in holy orders[2] generally. Nevertheless a special enactment of this kind, as such laws generally, must be understood as subject to exception in cases of extreme necessity.

Thomas, II. ii. 40, art. 2. Sylvester, word *bellum*, III.

Let these general statements in regard to auxiliary agents and subjects suffice; for the special questions relating to them will be treated in the proper connexion.

[1] Servius, *On the Aeneid*, IX [line 544=547].

[2] The Levites were in olden times exempt from military service, as Josephus remarked [*Antiquities of the Jews*, III. xii. 4]. For the clerics see Nicetas of Chonae, Book VI; *Capitularies* of Charles the Bald, *In Sparnaco*, xxxvii, in Gratian, *Decretum*, I. v. 5 [I. l. 5] and II. xxiii. 8. Such are the canons; but consult Anna Comnena [X. viii. 7] to see how much more strictly they were observed by the Greeks than by the Latins.

END OF BOOK I

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